EXHIBIT
13

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

EMERY SAPP & SONS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 4:24-cv-00081**
	)	
	)	
GUNTERT & ZIMMERMAN CONSTR. DIV., INC.,	)	
	)	
	)	
Defendant.	)	

PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT

COMES NOW Plaintiff Emery Sapp & Sons, Inc. ("ESS") by and through its undersigned counsel of record, and hereby moves the Court pursuant to Fed. R. Civ. P. 55 for the Entry of Default Judgment in its favor and against Guntert & Zimmerman Constr. Div., Inc. ("Defendant"). In support of Plaintiff's Motion for Default, plaintiff states as follows:

1. Plaintiff filed its Verified Complaint (the "Complaint") (Doc. 1) on February 2, 2024, seeking judgment for breach of contract.

2. On February 8, 2024, Defendant Guntert & Zimmerman Constr. Div., Inc. was served with the Complaint in the above-referenced cause and a return of service reflecting same was filed with the Court on February 13, 2024, as Document No. 4.

3. Defendant was required to file its Answer or other responsive pleadings on or before February 29, 2024.

4. To date, Defendant has failed to timely file its Answer or other responsive pleadings in this case and is in default.

5. Federal Rule of Civil Procedure 55 allows for Plaintiff to seek a default judgment with the Court against the Defendant at this time.

6. ESS is a civil construction contractor. Exhibit A, Amy Allen Affidavit ¶ 3.

7. On December 1, 2020, ESS and G&Z entered into a Conditional Sales Order Contract, Order Number G-7168090B (the "Sales Contract") in which G&Z agreed to sell ESS a paver (the "Equipment") for use on one of its projects. Ex. A ¶ 4.

8. Pursuant to the Sales Contract, ESS paid G&Z a downpayment of $714,185.20 for the Equipment. Ex. A ¶ 5.

9. Nonetheless, G&Z failed to provide ESS with the Equipment. Ex. A ¶ 6.

10. Because G&Z failed to deliver the Equipment, ESS had to incur $35,455 to rent a replacement paver. Ex. A ¶ 7.

11. The Parties subsequently executed a change order on February 4, 2021, wherein G&Z agreed to provide ESS with a Final Finisher for $49,162. Ex. A ¶ 8.

12. G&Z provided ESS with the Final Finisher. Ex. A ¶ 9.

13. [redacted] Ex. A ¶ 10.

14. [redacted] Ex. A ¶ 11.

15. [redacted] Ex. A ¶ 12.

16. [redacted] Ex. A ¶ 13.

17. G&Z thus still owes ESS the principal amount of $700,478.20 [redacted] Ex. A ¶ 14.

18. [redacted]

[redacted] Ex. A ¶ 15.

19. The Missouri statutory prejudgment interest rate is nine percent per annum under Mo. Rev. Stat. § 408.020. Ex. A ¶ 16.

20. Prejudgment interest at a rate of nine percent thus accrued on the $700,478.20 from June 1, 2022 to March 1, 2024, in the amount of $110,325.32. Ex. A ¶ 17.

21. [redacted] ESS is thus owed a sum certain total of $810,803.52. Ex. A ¶ 18.

22. Federal Rule of Civil Procedure 55(b)(1) authorizes the Clerk to enter judgment by default because Defendant has failed to answer or otherwise respond to the Complaint, Defendant is neither a minor nor an incompetent person, and Plaintiff's claim is for a sum certain.

WHEREFORE, Plaintiff Emery Sapp & Sons, Inc. ("ESS") respectfully requests that this Court enter Default Judgment against Defendant Guntert & Zimmerman Constr. Div., Inc.

Respectfully submitted by:

LATHROP GPM LLP

By: *David R. Frye*

David R. Frye MO # 45071
Brad P. Johnson MO # 72505
2345 Grand Blvd., Ste. 2200
Kansas City, MO 64108-2618
Telephone: (816) 292-2000
Telecopier: (816) 292-2001
david.frye@lathropgpm.com
brad.johnson@lathropgpm.com

Attorneys for Plaintiff Emery Sapp & Sons, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

EMERY SAPP & SONS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 4:24-cv-00081**
	)	
	)	
GUNTERT & ZIMMERMAN CONSTR. DIV., INC.,	)	
	)	
	)	
Defendant.	)	

AFFIDAVIT OF AMY ALLEN

I, Amy Allen, being duly sworn upon his oath states:

1. I am over twenty-one years of age and have personal knowledge of and am competent to testify to the matters set forth in this affidavit.

2. I am the Chief Administrative Officer & General Counsel of Emery Sapp & Sons, Inc. ("ESS").

3. ESS is a civil construction contractor.

4. On December 1, 2020, ESS and G&Z entered into a Conditional Sales Order Contract, Order Number G-7168090B (the "Sales Contract") in which G&Z agreed to sell ESS a paver (the "Equipment") for use on one of its projects.

5. Pursuant to the Sales Contract, ESS paid G&Z a downpayment of $714,185.20 for the Equipment.

6. Nonetheless, G&Z failed to provide ESS with the Equipment.

7. Because G&Z failed to deliver the Equipment, ESS had to incur $35,455 to rent a replacement paver.

8. The Parties subsequently executed a change order on February 4, 2021, wherein G&Z agreed to provide ESS with a Final Finisher for $49,162.

9. G&Z provided ESS with the Final Finisher.

10. Accordingly, [redacted]

11. Exhibit 1 attached hereto is a true and correct copy of [redacted]

12. [redacted]

13. [redacted]

14. G&Z thus still owes ESS the principal amount of $700,478.20 [redacted]

15. [redacted]

16. The Missouri statutory prejudgment interest rate is nine percent per annum under Mo. Rev. Stat. § 408.020.

17. Prejudgment interest at a rate of nine percent thus accrued on the $700,478.20 from June 1, 2022 to March 1, 2024, in the amount of $110,325.32.

18. [redacted] ESS is thus owed a total of $810,803.52.

FURTHER AFFIANT SAYTH NOT.

STATE OF MISSOURI)
) ss
COUNTY OF ~~JACKSON~~ BOONE)

By: _____
Amy Allen, Chief Administrative Officer
and General Counsel

Subscribed and sworn to before me this 4 day of March, 2024.

_____
NOTARY PUBLIC

My Commission Expires: 3/4/26

ANGELA C. REGAN
Notary Public-Notary Seal
State of Missouri
Boone County
Commission #14588020
My Commission Expires 3-4-2026

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

EMERY SAPP & SONS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 4:24-cv-81**
	)	
	)	
GUNTERT & ZIMMERMAN CONSTR. DIV., INC.,	)	
	)	
	)	
Defendant.	)	

EXHIBIT 1 - Settlement Agreement
(FILED SEPARATELY UNDER SEAL)

63282035v1