IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VANGUARD LEASING, INC., Plaintiff,	:	
v.	:	CIVIL ACTION
FLEETWOOD INDUSTRIES, Defendant/Third Party Plaintiff,	:	
v.	:	NO. 2:08-cv-01407-LDD
HANSON MEDICAL SYSTEMS, INC., et al., Third Party Defendants.	:	

ORDER

AND NOW, this 25th day of February 2009, upon consideration of Plaintiff Vanguard Leasing, Inc.'s Motion for Judgment on the Pleadings (Doc. No. 20), Defendant/Third-Party Plaintiff Fleetwood Industries' Response thereto (Doc. No. 28), Third-Party Defendants' Motion to Dismiss for Lack of Personal Jurisdiction (Doc. No. 29), Defendant/Third-Party Plaintiff's Response thereto (Doc. No. 31), and Third-Party Defendants' Reply (Doc. No. 35), it is hereby ORDERED that Plaintiff Vanguard Leasing, Inc.'s Motion for Judgment on the Pleadings is GRANTED and Third-Party Defendants' Motion to Dismiss is GRANTED.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Plaintiff Vanguard Leasing, Inc. ("Vanguard") commenced this action on September 17, 2007 in state court against Defendant/Third-Party Plaintiff Fleetwood Industries ("Fleetwood") setting forth a cause of action for breach of contract. Fleetwood answered and, on March 24,

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2008, removed to this Court. On June 16, 2008, Fleetwood filed an Impleader Complaint alleging several tort claims and a breach of contract claim against Third-Party Defendant Hanson Medical Systems, Inc. and its senior management including Third-Party Defendants James A. Hanson, Martha E. Hanson, Joe Gonzalez (collectively, "HMS Defendants"). (Fleetwood's Impleader Compl. ¶¶ 6-10.)

According to Vanguard's Complaint, Vanguard is in the business of financing leased office equipment. (Vanguard's Compl. ¶ 3.) Vanguard established a Broker Agreement with Fleetwood pursuant to which Fleetwood acted as a broker and sold leases and other contracts to Vanguard. (Id. ¶¶ 4-5 & Ex. A.) Under Paragraph 3 of the Broker Agreement, Fleetwood warranted that any leases and other contracts sold to Vanguard were valid and enforceable, and that the equipment was delivered with clear title. (Id. ¶ 6 & Ex. A ¶ 3.) In the event that any contracts were not enforceable or that equipment was not delivered with clear title, Paragraph 4 of the Broker Agreement required that Fleetwood repurchase the contracts from Vanguard. (Id. ¶ 7 & Ex. A ¶ 4.)

Vanguard and Fleetwood later entered into an Installment Note and Security Agreement whereby Fleetwood agreed to repurchase a contract that violated Paragraph 3 of the Broker Agreement. (Id. ¶ 8 & Ex. B.) The installment Note and Security Agreement obligated Fleetwood to make 51 equal monthly payments of $1,566.00 each and 1 payment of $101.00. (Id. ¶ 9 & Ex. B.) Under Paragraph 2 of the Installment Note and Security Agreement, "[Fleetwood's] obligation to make the Payments shall be absolute and unconditional and is not subject to any abatement, set-off, defense or counterclaim for any reason whatsoever." (Id. Ex. B ¶ 2.) In addition, under Paragraph 13 of the Installment Note and Security Agreement,

"[Fleetwood] shall not be discharged from its obligations hereunder or with respect to the Indebtedness except by payment in full of all amounts due and to become due and the performance of all other obligations with respect thereto." (Id. Ex. B ¶ 13.) Fleetwood made 5 payments to Vanguard, the last of which was received in July of 2007. (Vanguard's Compl. ¶ 11.) According to Vanguard, Fleetwood therefore defaulted on its obligations under the Installment Note and Security Agreement on August 22, 2007. (Id.) As a result, Vanguard declared the entire unpaid balance—$54,847.39—due. (Id. ¶ 13-14.) The installment Note and Security Agreement provides that Vanguard is entitled to interest on the accelerated amount due in the amount of 15% per annum from the date of default. (Id. ¶ 15 & Ex. B ¶ 5.) Accordingly, Vanguard now seeks $64,756, the total of the accelerated amount due plus interest from August 22, 2007 to November 4, 2008, the date Vanguard filed its Motion for Judgment on the Pleadings. (Vanguard's Mot. J. Pleadings Proposed Order.) Vanguard's Motion for Judgment on the Pleadings is now ripe for resolution.

Fleetwood does not dispute the facts as set forth by Vanguard, including the amount allegedly due, but rather relies on the allegations set forth in its Impleader Complaint to defend against Vanguard's Motion for Judgment on the Pleadings. (Fleetwood's Br. Opp'n Mot. J. Pleadings 1.) According to the Impleader Complaint, our analysis should begin with the efforts of the Institute of Bariatric Medicine, P.A. ("IBM")[1] to obtain a piece of medical equipment called the Palomoar Starlux Laser (the "laser"). (Fleetwood's Impleader Compl. ¶ 13.) IBM approached Fleetwood for assistance securing lease financing to pay for the laser. (Id. ¶ 14.)

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[1] IBM has since filed for Chapter 11 Bankruptcy and is not a party to this litigation. (Fleetwood's Impleader Compl. ¶ 13 n.2.)

IBM represented that it would obtain the laser from HMS Defendants. (Id. ¶ 13.) Fleetwood, acting as broker for IBM, contacted Vanguard, entered negotiations, and ultimately secured permanent financing for the laser to be leased by IBM. (Id. ¶¶ 15-16.) Under the financing arrangement, HMS Defendants sold the laser to Fleetwood for $65,500.00 and purported to ship the laser to IBM. (Id. ¶¶ 17-19.) Vanguard then sent a check for $65,500.00 to HMS Defendants. (Id. ¶ 21.) However, according to Fleetwood, HMS Defendants never actually shipped the laser to IBM. (Id. ¶ 22.) Rather, HMS Defendants deposited the money from Vanguard, keeping a portion and disbursing the rest to IBM. (Id.) According to Fleetwood, HMS Defendants' actions render HMS Defendants liable to Fleetwood and prevent the entry of judgment against Fleetwood in favor of Vanguard.

On January 24, 2009, HMS Defendants filed a Motion to Dismiss for Lack of Personal Jurisdiction. For purposes of HMS Defendants' Motion to Dismiss for lack of personal jurisdiction, we set forth the location of the events described above with a particular emphasis on any contacts between HMS Defendants and this forum. Vanguard is a Pennsylvania Corporation. (Vanguard's Compl. ¶ 1.) Fleetwood is a New Jersey corporation. (Id. ¶ 2; Fleetwood's Impleader Compl. ¶ 4.) HMS is a Florida corporation, and all of the individual HMS Defendants reside in Florida. (Fleetwood's Impleader Compl. ¶¶ 6-11; Fleetwood's Notice Removal ¶ 8.) IBM is also located in Florida. (Fleetwood's Notice Removal ¶ 8.) The events transpired as follows. IBM, a Florida corporation, decided to obtain a laser from HMS, another Florida corporation. From Florida, IBM solicited Fleetwood, a New Jersey corporation, to obtain financing for the laser. From New Jersey, Fleetwood then obtained financing from Vanguard, a Pennsylvania corporation. HMS Defendants sold the laser to Fleetwood in New Jersey and

shipped the laser to IBM in Florida. Pursuant to the financing arrangement entered into by Vanguard and Fleetwood at the request of IBM, Vanguard sent one payment of $65,500.00 to HMS Defendants in Florida. HMS Defendants' Motion to Dismiss has been briefed and is ripe for resolution.

II. MOTION FOR JUDGMENT ON THE PLEADINGS

A. Legal Standard

Under Federal Rule of Civil Procedure 12(c), "[a]fter the pleadings are closed . . . a party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). "[J]udgment will not be granted unless the movant clearly establishes that no material issue of fact remains to be resolved and that he is entitled to judgment as a matter of law." Rosenau v. Unifund Corp., 539 F.3d 218, 221 (3d Cir. 2008) (quoting Jablonski v. Pan Am. World Airways, Inc., 863 F.2d 289, 290-91 (3d Cir. 1988)). In reviewing a motion for judgment on the pleadings, we "view the facts presented in the pleadings and the inferences to be drawn therefrom in the light most favorable to the . . . non-moving party." Oxford Assocs. v. Waste Sys. Authority of Eastern Montgomery County, 271 F.3d 140, 144-45 (3d Cir. 2001) (quoting Green v. Fund Asset Mgmt., L.P., 245 F.3d 214, 220 (3d Cir. 2001)). The Court may look to the facts alleged in the complaint and its attachments. Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1251, 1261 (3d Cir. 1994).

B. Discussion

Fleetwood admits that it stopped paying Vanguard, and Vanguard therefore moves for judgment on the pleadings. Fleetwood contends, however, that we cannot enter judgment at this stage of the proceedings because IBM and HMS Defendants colluded to secure funding with the laser as collateral while they never actually owned the laser. (Fleetwood's Br. Opp'n Mot. J.

Pleadings 7-8.) According to Fleetwood, this was an unforeseeable event that frustrated the purpose of the contract or rendered Fleetwood's performance impracticable or impossible. (Id. 4-7.) Vanguard responds by pointing to two clauses contained in the Installment Note and Security Agreement that make Fleetwood's obligations "absolute and unconditional." (Vanguard's Mot. J. Pleadings 10-12.) According to Paragraph 2 of the Installment Note and Security Agreement, "[Fleetwood's] obligation to make the Payments shall be absolute and unconditional and is not subject to any abatement, set-off, defense or counterclaim for any reason whatsoever." (Vanguard's Compl. Ex. B ¶ 2.) In addition, Paragraph 13 of the Installment Note and Security Agreement states, "[Fleetwood] shall not be discharged from its obligations hereunder or with respect to the Indebtedness except by payment in full of all amounts due and to become due and the performance of all other obligations with respect thereto."[2] (Vanguard's Compl. Ex. B ¶ 13.)

The clauses pointed to by Vanguard are commonly known as "hell or high water" provisions. See, e.g., Lyon Fin. Servs., Inc. v. Clear Sky MRI & Diagnostic Ctrs., Inc., No. 05-3084, 2006 WL 2338407, at *5 (E.D. Pa. Aug. 10, 2006); Lyon Fin. Servs., Inc. v. Woodlake Imaging, LLC, No. 04-3334, 2005 WL 331695, at *3 (E.D. Pa. Feb. 9, 2005); Phila. Sav. Fund Soc. v Deseret Mgmt. Corp., 632 F. Supp. 129, 135 (E.D. Pa. 1985). "Hell or high water" provisions in finance lease transactions are "strictly enforceable as a matter of law" in the equipment leasing industry. Phila. Sav. Fund Soc., 632 F. Supp. at 136. Despite potentially

[2] Fleetwood admits that the Installment Note and Security Agreement provides that, "in the event of default [by IBM], Vanguard can demand the full amount of the Note to be immediately due and payable with [Fleetwood] as surety for the debt." (Fleetwood's Impleader Compl. ¶ 2 n.1.)

harsh consequences, courts enforce these provisions "in cases of incomplete funding, cases of potential 'double payments,' and cases where the equipment was never delivered." Woodlake Imaging, LLC, 2005 WL 331695 at *4 (citations omitted). As one court has stated:

> The essential practical consideration requiring liability as a matter of law in these situations is that these clauses are essential to the equipment leasing industry. To deny their effect as a matter of law would seriously chill business in this industry because it is by means of these clauses that a prospective financier-assignee of rental payments is guaranteed meaningful security for his outright loan to the lessor.

Phila. Sav. Fund Soc., (quoting In re O.P.M. Leasing Servs., Inc., 21 B.R. 993, 1005-08 (S.D.N.Y. 1981)). Here, Fleetwood attempts to raise defenses that it contractually waived pursuant to the "hell or high water" clauses. "[T]o deny th[ese] clause[s] [their] full force and effect would effectively reconstruct the contract contrary to the intent of the parties, which reconstruction would be impermissible." Id. (quoting In re O.P.M. Leasing Servs., 21 B.R. at 1006). Thus, even viewing the allegations raised in Fleetwood's Impleader Complaint as true, Vanguard is entitled to judgment as a matter of law.

II. MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

A. Legal Standard

Under Federal Rule of Procedure 12(b)(2), a court must grant a motion to dismiss if it lacks personal jurisdiction. Fed. R. Civ. P. 12(b)(2). "Once challenged, the plaintiff bears the burden of establishing personal jurisdiction." O'Connor v. Sandy Lane Hotel Co., Ltd., 496 F.3d 312, 316 (3d. Cir. 2007) (citing Gen. Elec. Co. v. Deutz AG, 270 F.3d 144, 150 (3d Cir. 2001)). If a court holds an evidentiary hearing or allows jurisdictional discovery, the plaintiff must "prove that personal jurisdiction is proper by a preponderance of the evidence." Leone v.

Cataldo, 574 F. Supp. 2d 471, 477 (E.D. Pa. 2008) (citations omitted). In the absence of an evidentiary hearing or jurisdictional discovery, the plaintiff need "only establish a prima facie case of personal jurisdiction[,] and the plaintiff is entitled to have its allegations taken as true and all factual disputes drawn in its favor." Miller Yacht Sales, Inc. v. Smith, 384 F.3d 93, 97 (3d Cir. 2004) (citing Pinker v. Roche Holdings Ltd., 292 F.3d 361, 368 (3d Cir. 2002)); see also O'Connor, 496 F.3d at 316. To defeat a motion to dismiss, a plaintiff's factual allegations must be made with "reasonable particularity." Toys "R" Us, Inc. v. Step Two, S.A., 318 F.3d 446, 456 (3d Cir. 2003). Here, because we have not held an evidentiary hearing or permitted jurisdictional discovery, we will draw factual disputes in Plaintiff's favor and consider whether Plaintiff has alleged facts that establish a prima facie case of personal jurisdiction.

B. Discussion

Under Federal Rule of Civil Procedure 4(k), a district court typically exercises personal jurisdiction according to the law of the state where it sits. Fed. R. Civ. P. 4(k)(1)(A). Because we sit in the Eastern District of Pennsylvania, we apply the Pennsylvania long-arm statute, which provides for jurisdiction "to the fullest extent allowed under the Constitution of the United States" and "based on the most minimum contact with th[e] Commonwealth allowed under the Constitution of the United States." O'Connor, 496 F.3d at 316 (quoting 42 Pa. Cons. Stat. Ann. § 5322(b)). "Accordingly, in determining whether personal jurisdiction exists, we ask whether, under the Due Process Clause, the defendant has 'certain minimum contacts with . . . [Pennsylvania] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.'" Id. at 316-17 (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)).

There are two recognized types of personal jurisdiction that comport with the Due Process Clause: general and specific. Id. at 317 (citing Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414-15 & n.9 (1984)). "General jurisdiction exists when a defendant has maintained systematic and continuous contacts with the forum state." Marten v. Godwin, 499 F.3d 290, 296 (3d Cir. 2007) (citing Helicopteros, 466 U.S. at 414-15 & n.8). "Specific jurisdiction exists when the claim arises from or relates to conduct purposefully directed at the forum state." Id. (citing Helicopteros, 466 U.S. 414-15 & n.9). Here, Fleetwood only asserts specific personal jurisdiction. (Fleetwood's Br. Opp'n Mot. Dismiss 8.)

Determining whether specific jurisdiction exists involves a three-part inquiry: (1) the defendant must have "purposefully directed" his activities at the forum; (2) the plaintiff's claim must "arise out of or relate to" at least one of those specific activities; and (3) the assertion of jurisdiction must otherwise comport with "fair play and substantial justice." See Marten, 499 F.3d at 296 (citations omitted); O'Connor, 496 F.3d at 317 (citations omitted). Our resolution of this matter turns on the first of these three parts. "At the threshold, the defendant 'must have purposefully avail[ed] itself of the privilege of conducting activities within the forum.'" O'Connor, 496 F.3d at 317 (quoting Hanson v. Denckla, 357 U.S. 235, 253 (1958)). "[W]hat is necessary is a deliberate targeting of the forum." Id.

Fleetwood seeks to assert specific jurisdiction over HMS Defendants, based on the sale of the laser to Fleetwood and the shipment of the laser to IBM.[3] (Fleetwood's Br. Opp'n Mot.

[3] We note that the usual practice is to assess personal jurisdiction on a claim-by-claim basis. O'Connor, 496 F.3d at 318 n.3 (citing Remick v. Manfredy, 238 F.3d 248, 255-56 (3d Cir. 2001)). But it may not be necessary to do so for certain factually overlapping claims. Id. (citing Remick, 238 F.3d at 255-56). Here, Fleetwood brings claims for common law fraud, breach of fiduciary duty, conspiracy, breach of contract, violation of the Pennsylvania Racketeer

Dismiss 8.) However, Defendant HMS is a Florida corporation and the individual HMS Defendants reside in Florida. (Fleetwood's Impleader Compl. ¶¶ 6-11; Fleetwood's Notice Removal ¶ 8.) Further, the laser was sold "to Fleetwood in New Jersey." (Fleetwood's Mem. Opp'n Mot. Dismiss 9.) Finally, the laser was shipped, if at all, to IBM in Florida. (Fleetwood's Impleader Compl. ¶ 17.) Thus, as we read the argument set forth by Fleetwood in its Brief opposing HMS Defendants' Motion to Dismiss, there was no contact between HMS Defendants and Pennsylvania, let alone the purposeful availment necessary to justify the assertion of specific jurisdiction.

Although not raised by Fleetwood, we observe that one contact was alleged to have occurred between HMS Defendants and this forum: HMS Defendants received payment for the laser from Vanguard, a Pennsylvania corporation. (Fleetwood's Impleader Compl. ¶ 21.) However, this payment was sent to HMS Defendants as a result of a contract that Fleetwood entered into with Vanguard. (Fleetwood's Mem. Opp'n Mot. Dismiss 3.) Further, it was IBM that solicited Fleetwood to act as a broker to secure lease financing. (Fleetwood's Impleader Compl. ¶ 14.) As alleged by Fleetwood, HMS Defendants had no contact with Vanguard other than receipt of this payment. Because a deliberate targeting of the forum is necessary, "the 'unilateral activity of those who claim some relationship with a nonresident defendant' is insufficient." O'Connor, 496 F.3d at 317 (quoting Hanson, 357 U.S. at 253). Here, Fleetwood in New Jersey, at the request of IBM in Florida, contracted with Vanguard in Pennsylvania for payment to HMS in Florida. HMS Defendants merely passively received the payment from

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Influenced and Corrupt Organizations Act, and violation of the federal Racketeer Influenced and Corrupt Organizations Act. (Fleetwood's Impleader Compl.) These claims are all based on the same factual allegations and therefore do not require independent analysis.

Vanguard due to the arrangements made by IBM and Fleetwood. Even taking Fleetwood's allegations as true and resolving all inferences in its favor, we see no purposeful direction of activities at Pennsylvania by HMS Defendants, and Fleetwood's claims therefore are insufficient to justify our exercise of specific personal jurisdiction over HMS.

Fleetwood contends that HMS Defendants' Motion is untimely. (Fleetwood's Br. Opp'n Mot. Dismiss 5.) According to Fleetwood, HMS Defendants' objection to personal jurisdiction must have been raised before HMS Defendants answered the Impleader Complaint. (Id.) In the alternative, Fleetwood argues that HMS Defendants waived their objection by failing to raise this objection in their Answer. (Id.) "Although [HMS Defendants] filed this motion after answering the complaint, that answer included . . . lack of personal jurisdiction . . . . Courts in this circuit have been unwilling to rule a motion untimely in such circumstances." Molnlycke Health Care AB v. Dumex Med. Surgical Prods., Ltd., 64 F. Supp. 2d 448, 449 n.1 (E.D. Pa. 1999) (rejecting waiver argument where defense of lack of personal jurisdiction was raised in answer); see 5C Charles Allen Wright & Arthur R. Miller, Federal Practice & Procedure § 1361 ("A strict interpretation of the timing provision's language leads to the conclusion that the district judge must deny any Rule 12(b) motion made after a responsive pleading is interposed as being too late. However, federal courts have allowed untimely motions if the defense has been previously included in the answer."). Here, while HMS Defendants made no pre-answer motions, they raised the defense of lack of personal jurisdiction in their Answer. (HMS Defendants' Answer ¶ 4 ("It is denied that the Court has personal jurisdiction over Third-Party Defendants.").) Thus, we decline to hold that their objection to personal jurisdiction was untimely.

Fleetwood also argues that we must retain this case because we have removal jurisdiction

under 28 U.S.C. § 1441(a) and 28 U.S.C. § 1447 or, in the alternative, supplemental jurisdiction under 28 U.S.C. § 1367. (Fleetwood's Br. Opp'n Mot. Dismiss 6-7.) 28 U.S.C. § 1367 is a subject matter jurisdiction provision that does not confer authority for the exercise of personal jurisdiction.[4] 4A Charles Allan Wright & Arthur R. Miller, Federal Practice & Procedure § 1069.7. Similarly, removal from state court does not confer personal jurisdiction. Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 585 (1999) (affirming dismissal of case for lack of personal jurisdiction after removal from state court); Reliance Steel Prods. Co. v. Watson, Ess, Marshall & Enggas, 674 F.2d 587 (3d Cir. 1982) (upholding decision of district court dismissing case for lack of personal jurisdiction after case had been removed to federal court). Fleetwood appears to forget that "[t]he existence of subject matter jurisdiction and personal jurisdiction are two distinct threshold issues that must be established before a court reaches the merits of a case." Brown v. AST Sports Science, Inc., No. 02-1682, 2002 WL 32345935, at *4 (E.D. Pa. June 28, 2002). Thus, we find no authority in 28 U.S.C. §§ 1441, 1447, or 1367 that would justify the exercise of

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[4] Although not articulated as such, Fleetwood's argument may be based on the federal common law doctrine of pendant personal jurisdiction. See Robinson v. Penn Cent. Co., 484 F.2d 553 (3d Cir. 1973) (recognizing the doctrine of pendant personal jurisdiction where defendant was properly before the court on a federal claim); CE Distribution, LLC v. New Sensor Corp., 380 F.3d 1107, 1113 (9th Cir. 2008) (holding that pendant personal jurisdiction may exist over a "claim for which there is no independent basis for personal jurisdiction so long as it arises out of a common nucleus of operative facts with a claim in the same suit over which the court does have personal jurisdiction"); United States v. Botefuhr, 309 F.3d 1263, 1272 (10th Cir. 2002) (collecting cases and holding that under doctrine of pendant personal jurisdiction, "once a district court has jurisdiction over a defendant for one claim, it may 'piggyback' onto that claim other claims over which it lacks independent personal jurisdiction, provided that all the claims arise from the same facts as the claim over which it has proper personal jurisdiction"); Oetiker v. Jurid Werke, G.m.b.H., 556 F.2d 1, 4-5 (D.C. Cir. 1977) (applying the doctrine of pendant personal jurisdiction). This doctrine cannot apply here. As stated above, we are granting judgment in favor of Vanguard and against Fleetwood. Because we do not have personal jurisdiction over any case or claim related to Fleetwood's claims against HMS Defendants, Fleetwood has lost any possible hook upon which to base pendant personal jurisdiction.

personal jurisdiction over HMS.

IV. CONCLUSION

For the reasons set forth above, and upon consideration of Plaintiff Vanguard Leasing, Inc.'s Motion for Judgment on the Pleadings (Doc. No. 20), Defendant/Third-Party Plaintiff Fleetwood Industries' Response thereto (Doc. No. 28), Third-Party Defendants' Motion to Dismiss for Lack of Personal Jurisdiction (Doc. No. 29), Defendant/Third-Party Plaintiff's Response thereto (Doc. No. 31), and Third-Party Defendants' Reply (Doc. No. 35), it is hereby ORDERED as follows:

1. Plaintiff Vanguard Leasing, Inc.'s Motion for Judgment on the Pleadings (Doc. No. 20) is GRANTED.

2. Judgment is ENTERED against Defendant/Third-Party Plaintiff Fleetwood Industries and in favor of Plaintiff Vanguard Leasing, Inc. in the amount of $64,765.00.

3. Third-Party Defendants' Motion to Dismiss for Lack of Personal Jurisdiction (Doc. No. 29) is GRANTED.

4. Defendant/Third-Party Plaintiff Fleetwood Industries' Impleader Complaint is DISMISSED without prejudice to any ability Fleetwood Industries may have to refile in an appropriate forum.

5. Plaintiff Vanguard Leasing, Inc.'s outstanding First Motion for Protective Order (Doc. No. 32) is DENIED as moot.

6. The Clerk of Court is directed to close this matter for statistical purposes.

BY THE COURT:

/S/LEGROME D. DAVIS

Legrome D. Davis, J.