

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION

**FILED**

DEC 28 2005

ORIX FINANCIAL SERVICES, INC. )

Plaintiff )

v. )

CATHERINE ALAN and )

CATHERINE M. ALAN REVOCABLE )

TRUST DATED 8/14/1997 )

Defendants )

MICHAEL W. DOBINS, CLERK  
UNITED STATES DISTRICT COURT

CIVIL ACTION FILE No. **05 C 5 0 2 4 7**

**COMPLAINT**

Comes now Orix Financial Services, Inc. ("Orix") and shows the Court the following:

1. Orix is a corporation organized and existing under the laws of the State of New York. Orix maintains its principal place of business in Kennesaw, Georgia. It is a citizen of the states of New York and Georgia.

2. Defendant Catherine Alan ("Alan") is a natural person residing at 5825 Hawthorne Lane, Crystal Lake, McHenry County, Illinois. She is a citizen of Illinois.

3. Defendant Catherine M. Alan Revocable Trust Dated 8/14/1997 ("Trust") is, on information and belief, a trust organized and existing under the laws of the State of Illinois and maintaining its principal place of business at 5825 Hawthorne Lane, Crystal Lake, Illinois. It is a citizen of Illinois.

4. The amount in controversy between the parties is in excess of \$75,000 exclusive of interest and costs.

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332(a)(1).

#### **FACTS APPLICABLE TO ALL COUNTS**

6. On information and belief, Orix avers that Alan was the original trustee of defendant Trust and was the trustee of Trust in 2003 and 2004.

7. On information and belief, Orix avers that Alan and her husband have owned certain real property, to wit: Lot 15 in Brighton Oaks Unit Two, being a subdivision of part of the southwest quarter of section 35, Township 44 North, Range 7 East of the Third Principal Meridian, according to the plat thereof recorded May 26, 2000 as Document No. 2000R0027038 in McHenry County, Illinois. Permanent Index No. 13-35-356-004, and commonly known as 5825 Hawthorne Lane, Crystal Lake, Illinois (the "Property").

8. Orix filed suit against Alan and her husband on December 3, 2003, in the State of New York. Orix sought damages against them in the amount of \$174,589.83 principal plus accrued interest plus attorney's fees.

9. Alan's and her husband's duly designated agent for service of process accepted service on their behalf on December 3, 2003, and promptly delivered copies of the summons and complaint to them.

10. Neither Alan nor her husband filed an Answer in the New York case nor otherwise appeared.

11. On May 14, 2004, final judgment was entered against Alan and her husband for \$175,589.83 plus earned interest of \$99,315.21 plus attorney's fees of \$2,000. A true copy of the judgment is attached as Exhibit A.

12. On July 28, 2004, the New York judgment also became an Illinois judgment pursuant to the Uniform Enforcement of Foreign Judgments Act.

13. Orix filed memoranda of judgment with the McHenry County Recorder of deeds on August 16, 2004, against Alan and her husband. True copies are attached as Exhibit B.

14. Alan and her husband executed and delivered a quit claim deed for the Property ("Quit Claim Deed") to defendant Trust. A true copy of Quit Claim Deed is attached as Exhibit C.

15. Trust did not give "value" or "present value" to Alan within the meaning of 740 ILCS 160/4 in exchange for Quit Claim Deed.

16. Trust gave Alan no more than \$10 in exchange for Quit Claim Deed.

17. The fair market value of the Property less all outstanding secured indebtedness at the time Alan and her husband transferred the Quit Claim Deed to Trust was in excess of \$100,000.

18. Alan was insolvent at the time she delivered the Quit Claim Deed to Trust.

19. At the time of the delivery of the Quit Claim Deed to Trust Alan was unable to pay her debts when due, including her debt to Orix.

20. On information and belief, Orix avers Alan delivered Quit Claim Deed to Trust on or a few days before May 6, 2004.

21. Alan had received court process or was otherwise aware that Orix had

filed suit against her and her husband in the State of New York at the time she delivered Quit Claim Deed to Trust.

22. Alan and her husband continued to live in the Property after May 6, 2004.

23. Alan intended to incur or believed or reasonably should have believed that she would incur debts beyond her ability to pay as they became due on May 6, 2004 and at all times relevant.

24. Orix is entitled to an order revesting title to Property in Alan retroactively to immediately before Orix's memorandum of judgment was recorded.

#### **COUNT ONE**

##### **FRAUDULENT TRANSFER UNDER 5(a)(1)**

25. Alan delivered the Quit Claim Deed to Trust with the actual intent to hinder, delay, and defraud creditors of Alan in violation of 740 ILCS 160/5(a)(1).

#### **COUNT TWO**

##### **FRAUDULENT TRANSFER UNDER 5(a)(2)**

26. Alan delivered the Quit Claim Deed to Trust without receiving a reasonably equivalent value in exchange for the delivery of the Quit Claim Deed in violation of 740 ILCS 160/5(a)(2).

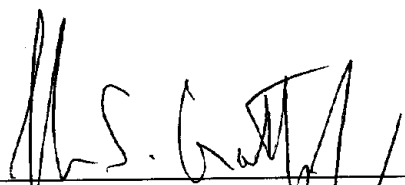
#### **COUNT THREE**

##### **ATTORNEY'S FEES AND EXPENSES OF LITIGATION**

27. Alan's and Trust's actions are willful, wonton, vexatious, and intended to cause harm to Orix. Orix is entitled to recover its expenses of litigation from Alan and Trust including reasonable attorney's fees.

WHEREFORE, Orix requests judgment:

- a) for an order revesting title to Property in Alan retroactively to immediately before Orix's memorandum of judgment was recorded on August 16, 2004;
- b) its expenses of litigation, including reasonable attorney's fees, for the bringing of this action;
- c) all other and further relief to which it is entitled.



JOHN S. GRAETTINGER, JR.  
Illinois ARDC No. 6197736  
Attorney for  
Orix Financial Services, Inc.

Of counsel  
Gardiner Koch & Weisberg  
Suite 950  
53 West Jackson Boulevard  
Chicago, Illinois 60604  
Voice: (312) 362-0000  
Fax: (312) 408-0321  
Email: JSG@Pentwater.com

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ORIX FINANCIAL SERVICES, INC., formerly  
known as ORIX CREDIT ALLIANCE, INC.,

Plaintiff,

-against-

1<sup>st</sup> CHOICE FREIGHT SYSTEMS, INC., JEFFREY  
W. ALAN and CATHERINE ALAN,  
Defendants.  
-----X

**03 CIVIL 9296 (RMB)  
CERTIFICATION OF JUDGMENT  
FOR REGISTRATION IN  
ANOTHER DISTRICT  
JUDGMENT #04,0927**

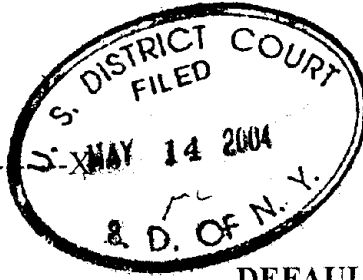
I, J. Michael McMahon, Clerk of this United States District Court certify that the attached is a true and correct copy of the judgment entered in this action on May 14, 2004 as it appears in the records of this court, and that \* no notice of appeal has been filed, and no motion of any kind listed in Rule 4(a) of the Federal Rules of Appellate Procedure has been filed.

IN TESTIMONY WHEREOF, I sign my name and affix the seal of this Court on  
June 17, 2004.

J. Michael McMahon  
Clerk

RL  
(By) Deputy Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



ORIX FINANCIAL SERVICES, INC., formerly  
known as ORIX CREDIT ALLIANCE, INC.,

DEFAULT JUDGMENT

Plaintiff,

Doc # 5

03 CV 9296 (RMB)

-against-

# 04,092?

1<sup>st</sup> CHOICE FREIGHT SYSTEMS, INC.,  
JEFFRY W. ALAN and CATHERINE ALAN,

Defendants.

(copy)  
(copy)  
5/17/04

-----X

This action has been commenced by the filing of a Complaint and the issuance of a Summons on December 3, 2003, a copy of said Summons and Complaint having been served upon each of the Defendants, 1<sup>st</sup> CHOICE FREIGHT SYSTEMS, INC., JEFFRY W. ALAN and CATHERINE ALAN, on December 3, 2003 by service upon Annabel Gonzalez, an officer of C-A Credit Corp., the agent for service of process designated by each of the defendants under the terms of the Leases executed by Defendant 1<sup>st</sup> CHOICE FREIGHT SYSTEMS, INC. and Guaranties executed by each of the personal Defendants, JEFFRY W. ALAN and CATHERINE ALAN, said Leases and Guaranties being described in the Complaint, and the said Summons with proof of service having been filed in the Office of the Clerk of the Court on or about December 3, 2003, and the defendants failure to file and serve an answer, move or otherwise appear in the action, including failure to attend the Initial Pretrial Conference, scheduled by the court to be held on March 5, 2004, which conference was duly noticed to the defendants, and upon plaintiff's application for judgment upon default as authorized by this Court at the scheduled conference held on March 5, 2004, and upon an Affidavit

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-9:00AM  
MAY 17 2004

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6-17-04

in Support of Plaintiff's Motion for Default Judgment, sworn to by William Bagby, an officer of plaintiff, on April 13, 2004, and Plaintiff's Affirmation in Support, made by Lewis M. Smoley, dated April 22, 2004, all of which are submitted herewith,

NOW, on application of LEWIS M. SMOLEY, attorney for plaintiff, it is

**ORDERED AND ADJUDGED:**

That the Plaintiff ORIX FINANCIAL SERVICES, INC., formerly known as ORIX CREDIT ALLIANCE, INC., have judgment against the Defendants, 1<sup>st</sup> CHOICE FREIGHT SYSTEMS, INC., JEFFRY W. ALAN and CATHERINE ALAN, jointly and severally, for a total liquidated amount of \$174,589.83, plus default interest at the rate of 1/15th of 1% *per diem* from the date of default until the date of entry of judgment, for Lease 1 from November 16, 2001 through April 22, 2004 in the amount of \$19,269.60, for Lease 2 from November 16, 2001 through April 22, 2004 in the amount of \$23,167.92, and for Lease 3 in the amount of \$56,877.69, for a total interest amount of \$99,315.21, plus attorneys' fees (to which the plaintiff is entitled pursuant to the terms of the defendants' Leases and Guaranties) in the amount of \$2,000.00, for a total amount of \$275,905.04.

Dated: New York, New York  
May 13, 2004

*RMB*  
\_\_\_\_\_  
U.S.D.J.  
Richard M. Berman

THIS DOCUMENT WAS ENTERED  
ON THE DOCKET ON 5/14/04

00309101.WPD

A CERTIFIED COPY  
J. MICHAEL McMAHON, CLERK

BY Jessica Rose  
DEPUTY CLERK



APV (2)

2004R0074253

3315 (Rev. 6/11/02) CCG 0015

08/16/2004 04:30PM

Memorandum of Judgment

PAGES 2

RECORDING FEE 26.00  
COUNTY STAMP FEE  
STATE STAMP FEE

IN THE CIRCUIT COURT OF  
COOK COUNTY, ILLINOIS

Orix Financial Services, Inc.

v.

1st Choice Freight Systems, Inc.  
Jeffrey Alan, and Catherine Alan

Recorder's Stamp

No. 04 L 050806

MEMORANDUM OF JUDGMENT

On July 28, 2004, \_\_\_\_\_, judgment was entered in this court  
in favor of the plaintiff Orix Financial Services, Inc., 600 Town Park Drive, Fifth Floor, Kennesaw, GA 30144  
\_\_\_\_\_ and against defendant Jeffrey Alan  
whose address is 5825 Hawthorn Lane, Crystal Lake IL 60014  
in the amount of \$ 275,905.04.

Judge Alexander R. White

*[Handwritten Signature]*

Judge

Judge's No.

26.

Atty. No.: 30819

Name: John S. Graettinger, Jr.

Atty. for: Orix Financial Services, Inc.

Address: 53 W. Jackson, Ste 950

City/State/Zip: Chicago, IL 60604

Telephone: (312) 362-0000

MT

04-08-8299

2

2004R0074255

3315 (Rev. 6/11/02) CCG 0015

08/16/2004 04:30PM

**Memorandum of Judgment**

PAGES 2

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**MEMORANDUM OF JUDGMENT**

On July 28, 2004, \_\_\_\_\_, judgment was entered in this court  
in favor of the plaintiff Orix Financial Services, Inc., 600 Town Park Drive, Fifth Floor, Kennesaw, GA 30144  
\_\_\_\_\_ and against defendant Catherine Alan  
whose address is 5825 Hawthorn Lane, Crystal Lake IL 60014  
in the amount of \$ 275,905.04.

Judge

Judge: Alexander P. Gallo

Judge's No.

9/16

Atty. No.: 30819

Name: John S. Graettinger, Jr.

Atty. for: Orix Financial Services, Inc.

Address: 53 W. Jackson, Ste 950

City/State/Zip: Chicago, IL 60604

Telephone: (312) 362-0000

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*Mee*

(2)

MCHEMRY COUNTY RECORDER  
 PHYLLIS L. VALTERS  
 2004R0039185  
 05/06/2004 09:00AM  
 RECS 2  
 RECORDS FEE 1.00  
 COUNTY STAMP FEE  
 STATE STAMP FEE

**QUIT CLAIM DEED**

Illinois Statutory

**MAIL TO:**

Michael E. Coppedge  
 Attorney At Law  
 20 Grant Street  
 Crystal Lake, IL 60014

**NAME AND ADDRESS OF TAXPAYER:**

Catherine M. Alan Revocable Trust  
 5825 Hawthorne Lane  
 Crystal Lake, Illinois 60014

Recorder's Stamp

THE GRANTOR(S), Jeffrey Alan and Catherine Alan, husband and wife, for and in consideration of the sum of Ten and no/100 (\$10.00) Dollars in hand paid, CONVEYS and Quit Claims to GRANTEE(S), the Catherine M. Alan Revocable Trust, dated August 14, 1997, all interest in the following described real estate situated in the County of McHenry and State of Illinois, to-wit:

LOT 15 IN BRIGHTON OAKS UNIT TWO, BEING A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 44 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 26, 2000, AS DOCUMENT NO. 2000R0027D38, IN MCHENRY COUNTY, ILLINOIS.

Permanent Index No.: 13-35-956-004

Common Address: 5825 Hawthorne Lane; Crystal Lake, Illinois

hereby releasing and waiving all rights under and by virtue of the Homestead Exemption Laws of the State of Illinois. Grantor hereby abrogates all his right, title and interest in and to the use of the easement for access purposes.

Dated this 1st day of April, 2003.

18.00

BY: [Signature] (Seal)  
 Jeffrey Alan  
 BY: [Signature] (Seal)  
 Catherine Alan

STATE OF ILLINOIS )  
 )  
 COUNTY OF \_\_\_\_\_ )

SS

**POOR QUALITY FOR IMAGING**

04-026-0928