

# MARKS & WEINBERG, P.C.

## **Orix Credit Alliance v. Strong Equip. Co., Inc.** 1999 WL 281095 (Mass. Super. Ct. 1999)

Strong Equipment Company ("Strong") executed equipment leases with C. N. Wood, who assigned all its rights, title and interest in and to the leases to Orix. Various related entities of Strong guaranteed the leases. After a default, Orix sued and moved for partial summary judgment on its claim for money owed by defendants for equipment rental under the leases and guarantees.

Strong responded that the leases were modified by oral agreement and that there still is a genuine issue of material fact concerning the parties' obligations under the original leases. Orix argued that the contract could not be modified because the lease states that "this contract contains the entire agreement of the parties and may not be modified except in writing." The court found that even where a contract states that the agreement may be amended only by written instrument, oral modification may be recognized by a court when it can be inferred from the conduct of the parties that they intended there to be a modification of the agreement.

The court held that summary judgment was inappropriate because circumstances indicate that there may have been an oral modification of the agreement.



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