

ORIGINAL

12

UNITED STATES DISTRICT COURT  
IN THE EASTERN DISTRICT OF MICHIGAN -- SOUTHERN DIVISION

MICHELLE FRANCO,

Plaintiff,

JUDGE : Tarnow, Arthur J.  
DECK : S. Division Civil Deck  
DATE : 12/21/2005 @ 11:58:49  
CASE NUMBER : 2:05CV74829  
IFP V. FRANCO V. BIRD ET AL (DA)

-vs-

DEMAND FOR JURY TRIAL

ROBERT W. BIRD, and  
RYAN & REED, INC.,

Defendants.

MAGISTRATE JUDGE KOMIVES

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Adam G. Taub (P48703)  
Lyngklip & Taub Consumer Law Group, PLC  
Attorney For Michelle Franco  
24500 Northwestern Highway, Ste. 206  
Southfield, MI 48075  
(248) 746-3790

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COMPLAINT & JURY DEMAND

JURISDICTION

1. This court has jurisdiction under the FDCPA, 15 U.S.C. §1692k(d) and 28 U.S.C. §§1331,1337.
2. This court may exercise supplemental jurisdiction over the related state law claims arising out of the same nucleus of operative facts which give rise to the Federal law claims.

PARTIES

3. The Plaintiff to this lawsuit is Michelle Franco who resides in Port Huron, Michigan.

4. The Defendants to this lawsuit are as follows:
  - a. Robert W. Bird ("Robert W. Bird"), an attorney doing business in Michigan at 1211 State Road 436, Suite 111, Casselberry, FL 32707, and who may be served with process at 1211 State Road 436, Suite 111 , Casselberry, FL 32707 under Florida state law.
  - b. Ryan & Reed, Inc. ("Ryan & Reed") which is a corporation doing business in at 510 Bering Dr. Suite 300, Houston, TX 77057, and whose resident agent, National Registered Agents, Inc. maintains its office at 1614 Sidney Baker Street , Kerrville, TX 78026.

#### VENUE

5. The transactions and occurrences which give rise to this action occurred in St. Clair County.
6. Venue is proper in the Eastern District of Michigan.

#### GENERAL ALLEGATIONS

7. Some time prior to August 5, 2005, Ryan & Reed was engaged by Blue Water College of Cosmetology to collect a debt allegedly owed by Michelle Franco.
8. Some time prior to August 5, 2005, Robert W. Bird was engaged by Ryan & Reed, Inc. to collect a debt allegedly owed by Michelle Franco.
9. Prior to August 5, 2005, Ryan & Reed communicated with Michelle Franco for the first time.
10. On or about August 5, 2005, Robert W. Bird communicated with Michelle Franco for the first time.
11. As set forth herein, these Defendants violated state and federal collection practices laws.

**COUNT 1 – Fair Debt Collection Practices Act (Robert W. Bird)**

12. Ms. Franco incorporates the preceding allegations by reference.
13. At all relevant times Robert W. Bird – in the ordinary course of its business – regularly engaged in the practice of collecting debts on behalf of other individuals or entities.
14. Robert W. Bird is a "debt collector" under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692a(6).
15. Robert W. Bird has engaged in violations of the FDCPA including, but not limited to the following:
  - a. Robert W. Bird used generally false, misleading or unfair methods to collect the debt., in violation of the general prohibitions in 15 U.S.C. §1692c.
  - b. Robert W. Bird made a false representation of-- (A) the character, amount, or legal status of the debt; or (B) any services rendered or compensation which may be lawfully received by Robert W. Bird for the collection of the debt, in violation of 15 U.S.C. §1692e(2).
  - c. Robert W. Bird made false representations in violation of 15 U.S.C. §1692c(3).
  - d. The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action, in violation of 15 U.S.C. §1692e(4).
  - e. The threat to take any action that cannot legally be taken or that is not intended to be taken, in violation of 15 U.S.C. §1692e(5).

- f. Robert W. Bird used false representations or deceptive means to collect or attempt to collect the debt or to obtain information concerning Ms. Franco, in violation of 15 U.S.C. §1692e(10).
  - g. Robert W. Bird used unfair or unconscionable means to collect or attempt to collect the debt, in violation of the general prohibition in 15 U.S.C. 1692(f).
  - h. Robert W. Bird collected an amount without express authorization under the agreement creating the debt or other statutory authority in violation of 15 U.S.C. 1692(f)(1).
16. Ms. Franco has suffered damages as a result of Robert W. Bird's violations of the FDCPA.

**COUNT II – Michigan Debt Collection Practices Act (Robert W. Bird)**

17. Ms. Franco incorporates the preceding allegations by reference.
18. Robert W. Bird is a "regulated person" under the Michigan Debt Collection Practices Act ("MDCPA"), M.C.L. § 445.251(g)(xi).
19. Robert W. Bird violated the Michigan Collection Practices Act, M.C.L. § 445.251 *et seq.* by:
- a. Communicating with a debtor in a misleading or deceptive manner in violation of M.C.L. §445.252(a).
  - b. Making an inaccurate, misleading, untrue, or deceptive statement or claim in a communication to collect a debt in violation of M.C.L. §445.252(e).
  - c. Misrepresenting in a communication with a debtor one or more of the following in violation of M.C.L. §445.252(f):
    - i. The legal status of a legal action being taken or threatened.
    - ii. The legal rights of the creditor or debtor.

- iii. That the nonpayment of a debt will result in the debtor's arrest or imprisonment, or the seizure, garnishment, attachment, or sale of the debtor's property.
  - iv. That accounts have been turned over to innocent purchasers for value.
  - d. Failing to implement a procedure designed to prevent a violation by an employee in violation of M.C.L. §445.252(q).
  - e. Employing a person required to be licensed under article 9 of Act No. 299 of the Public Acts of 1980, being sections 339.901 to 339.916 of the Michigan Compiled Laws, to collect a claim unless that person is licensed under article 9 of Act No. 299 of the Public Acts of 1980 in violation of M.C.L. §445.252(s).
20. Ms. Franco has suffered damages as a result of Robert W. Bird's violations of the Michigan Collection Practices Act.

**COUNT III – Fair Debt Collection Practices Act (Ryan & Reed)**

21. Ms. Franco incorporates the preceding allegations by reference.
22. At all relevant times Ryan & Reed – in the ordinary course of its business – regularly engaged in the practice of collecting debts on behalf of other individuals or entities.
23. Ryan & Reed is a "debt collector" under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692a(6).
24. Ryan & Reed has engaged in violations of the FDCPA including, but not limited to the following:
- a. Communicating with any person other than Ms. Franco for the purpose of acquiring location information about Ms. Franco, Ryan & Reed stated that Ms. Franco owed a

- debt, in violation of 15 U.S.C. §1692b(2).
- b. Ryan & Reed – without the prior consent of the consumer given directly to Ryan & Reed or the express permission of a court of competent jurisdiction – Ryan & Reed communicated with Ms.Franco in connection with the collection of a debt at unusual or inconvenient, times or places in violation of 15 U.S.C. §1692c(a)(1).
  - c. Ryan & Reed used obscene or profane language or language the natural consequence of which is to abuse the hearer or reader, in violation of 15 U.S.C. §1692d(2).
  - d. Ryan & Reed caused Ms.Franco's telephone to ring or engaged any Ms.Franco telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass her, in violation of 15 U.S.C. §1692d(5).
  - e. Ryan & Reed, through its agents, placed telephone calls without meaningful disclosure of the caller's identity, in violation of 15 U.S.C. §1692d(6).
  - f. Ryan & Reed used generally false, misleading or unfair methods to collect the debt., in violation of the general prohibitions in 15 U.S.C. §1692e.
  - g. Ryan & Reed made a false representation of-- (A) the character, amount, or legal status of the debt; or (B) any services rendered or compensation which may be lawfully received by Ryan & Reed for the collection of the debt, in violation of 15 U.S.C. §1692e(2).
  - h. Ryan & Reed made false representations or implied that an individual was an attorney or that any communication is from an attorney, in violation of 15 U.S.C. §1692e(3).
  - i. The representation or implication that nonpayment of any debt will result in the arrest

or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action, in violation of 15 U.S.C. §1692e(4).

- j. Ryan & Reed threatened to take action that cannot legally be taken or that is not intended to be taken, in violation of 15 U.S.C. §1692c(5).
- k. Ryan & Reed communicated or threatened to communicate credit information which is known or which should be known to be false, in violation of 15 U.S.C. §1692e(8).
- l. Ryan & Reed used false representations or deceptive means to collect or attempt to collect the debt or to obtain information concerning Ms.Franco, in violation of 15 U.S.C. §1692e(10).
- m. Ryan & Reed collected an amount without express authorization under the agreement creating the debt or other statutory authority in violation of 15 U.S.C. 1692(f)(1).
- n. Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.
- o. (6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if--
  - i. (A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;
  - ii. (B) there is no present intention to take possession of the property; or
  - iii. (C) the property is exempt by law from such dispossession or disablement.

25. Ms. Franco has suffered damages as a result of Ryan & Reed's violations of the FDCPA.

**COUNT IV – Michigan Debt Collection Practices Act (Ryan & Reed)**

26. Ms. Franco incorporates the preceding allegations by reference.

27. Ryan & Reed is a "regulated person" under the Michigan Debt Collection Practices Act ("MDCPA"), M.C.L. § 445.251(g)(xi).

28. Ryan & Reed violated the Michigan Collection Practices Act, M.C.L. § 445.251 *et seq.* include, but are not limited to, the following

- a. Communicating with a debtor in a misleading or deceptive manner, such as using the stationery of an attorney or credit bureau unless the regulated person is an attorney or is a credit bureau and it is disclosed that it is the collection department of the credit bureau, in violation of M.C.L. §445.252(a).
- b. Making an inaccurate, misleading, untrue, or deceptive statement or claim in a communication to collect a debt or concealing or not revealing the purpose of a communication when it is made in connection with collecting a debt in violation of M.C.L. §445.252(e).
- c. Misrepresenting in a communication with a debtor one or more of the following in violation of M.C.L. §445.252(f):
  - i. The legal status of a legal action being taken or threatened.
  - ii. The legal rights of the creditor or debtor.
  - iii. That the nonpayment of a debt will result in the debtor's arrest or imprisonment, or the seizure, garnishment, attachment, or sale of the debtor's property.



- iv. That accounts have been turned over to innocent purchasers for value.
  - d. Using a harassing, oppressive, or abusive method to collect a debt, including causing a telephone to ring or engaging a person in telephone conversation repeatedly, continuously, or at unusual times or places which are known to be inconvenient to the debtor. All communications shall be made from 8 a.m. to 9 p.m. unless the debtor expressly agrees in writing to communications at another time. All telephone communications made from 9 p.m. to 8 a.m. shall be presumed to be made at an inconvenient time in the absence of facts to the contrary in violation of M.C.L. §445.252(n).
  - e. Using profane or obscene language in violation of M.C.L. §445.252(o).
  - f. Failing to implement a procedure designed to prevent a violation by an employee in violation of M.C.L. §445.252(q).
  - g. Employing a person required to be licensed under article 9 of Act No. 299 of the Public Acts of 1980, being sections 339.901 to 339.916 of the Michigan Compiled Laws, to collect a claim unless that person is licensed under article 9 of Act No. 299 of the Public Acts of 1980 in violation of M.C.L. §445.252(s).
29. Ms. Franco has suffered damages as a result of Ryan & Reed's violations of the Michigan Collection Practices Act.

**COUNT V – Intentional Infliction of Emotional Distress (Ryan & Reed)**

- 30. Ms. Franco incorporates the preceding allegations by reference.
- 31. Ryan & Reed intentionally inflicted emotional distress on Ms. Franco.

32. Such infliction was caused by extreme and outrageous conduct, which was intentional or reckless, and which caused severe emotional distress.
33. Ms. Franco has been harmed by this intentional infliction of emotional distress in an amount to be determined at trial.

**DEMAND FOR JURY TRIAL**

34. Plaintiff demands trial by jury in this action.


**DEMAND FOR JUDGMENT FOR RELIEF**

35. *Accordingly, Ms. Franco requests that the Court grant:*
- a. *Actual damages.*
  - b. *Statutory damages.*
  - c. *Statutory costs and attorney fees.*

Respectfully Submitted,

LYNCKLIP & TAUB  
CONSUMER LAW GROUP, PLLC

By:

  
Adam G. Taub (P48703)  
Attorney For Michelle Franco  
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(248) 746-3790  
AdamLaw@Pop.Net

Dated: December 19, 2005

**ORIGINAL**

JS 44 11/99

**CIVIL COVER SHEET** COUNTY IN WHICH THIS ACTION AROSE: St. Clair

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

**I. (a) PLAINTIFFS**

MICHELLE FRANCO

**DEFENDANTS**

ROBERT W. BIRD, and  
RYAN & REED, INC.

**05 - 748 29**

(b) County of Residence of First Listed \_\_\_\_\_

County of Residence of First Listed \_\_\_\_\_

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (if known)

Lynkklip & Taub Consumer Law Group, PLC  
24500 Northwestern Hwy., Ste. 206, Troy, MI 48075  
(248) 746-3790

**ARTHUR J. TARNOW**

**MAGISTRATE JUDGE KOMIVES**

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item 111)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PLA                        | DEF                        |   | PLA                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another                      | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal of Business in Another State   | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment and Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel And Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury-Med. Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 810 Agriculture <input type="checkbox"/> 820 Other Food & Drug <input type="checkbox"/> 825 Drug Related Seizure of Property 21. 881 <input type="checkbox"/> 830 Liquor Laws <input type="checkbox"/> 840 R.R. & Truck <input type="checkbox"/> 850 Airline Regs. <input type="checkbox"/> 860 Occupational Safety/Health <input type="checkbox"/> 860 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 H IA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN** (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 (specify) \_\_\_\_\_
- 6 Multi district Litigation
- 7 Judge from District Appeal to Magistrate

**VI. CAUSE OF ACTION** (Check the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Plaintiff brings this cause of action for violations of the FDCA 15 U.S.C. §1692 and Michigan Debt Collection Act, M.C.L. §445.21 et seq

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

\$ DEMAND \_\_\_\_\_

CHECK YES only if demanded in complaint:

JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY** (See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

SIGNATURE OF ATTORNEY OF RECORD

12-19-05

*Arthur J. Tarnow*

### PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

Yes  
 No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

Yes  
 No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

Notes :

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