Michigan Debt Collection Laws

Submitted by Mimi D. Kalish, Esq., Senior Associate, Stillman Law Office
http://www.stillmanlaw.com/
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About the author: Mimi D. Kalish has been associated with Stillman Law Office in West Bloomfield, MI, for the last decade. During that period, she has witnessed the exponential growth of this full-service collections firm, which now employs over 125 individuals in its Southeastern Michigan office. Michael Stillman, the firm's owner and founder, has expanded the reach of the firm beyond Michigan's boundaries, with the formation of its sister firm, Schlee & Stillman, LLC, in 2006, serving several East Coast states.

Michigan Limitation of Actions

For most collection actions, there is a specific period of time during which a creditor may pursue the collection of a debt. In Michigan, the filing of a breach of contract and/or open account action, for default of a credit card agreement, for example, must be done within the 6-year Statute of Limitations. *MCL §600.5807(8).* The relevant date for determining when the six-year Statute of Limitations begins to run is the date of the last activity on the account, whether it be a purchase or a payment made. For a debt arising out of the sale of goods which is governed by the Uniform Commercial Code (UCC), a collection action must be commenced within 4 years after the cause of action has accrued. *MCL §440.2725(1).* In the sales scenario, a cause of action occurs when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. *MCL§440.2725(2)*. Civil judgments in Michigan expire 10 years after the date of entry, but may be renewed for another 10-year term if a motion to renew judgment is filed and an order entered prior to its expiration date. *MCL §600.5809(3)*. In order to collect upon a judgment entered in another state, where the judgment-debtor is now living in Michigan, it is necessary to first *domesticate* the judgment in the appropriate Michigan court. A foreign judgment domesticated in Michigan is subject to the same 10-year date of expiration from the date of domestication, unless renewed by motion prior to its expiration date. *MCL §691.1173.*

Civil Penalties for Bad Checks in Michigan

In addition to potential criminal consequences for passing a bad check, Michigan provides a civil remedy allowing for the recovery of treble damages, provided the injured party follows a two-step process. *MCL §600.2952* provides that upon receiving a bad check, the individual or business must send a letter to the debtor including the specific language from the applicable statute. If the debtor fails to make payment on the check within 30 days, then the creditor is entitled to a judgment for the full amount of the check, plus damages in an amount equal to 2 times the amount of the check, or $100.00, whichever is greater, in addition to costs of $250.00.

Garnishment Exemptions

Michigan law exempts certain types of funds from garnishment. Worker's compensation benefits paid pursuant to the Worker's Disability Compensation Act "shall not be assignable or subject to attachment or garnishment or be held liable in any way for a debt". *MCL § 418.821*. Further, unemployment benefits in Michigan are not subject to garnishment. *MCL § 421.30*. Michigan General Assistance Benefits covered by the Social Welfare Act, including monies paid pursuant to the Family Independence Program, Food Assistance Program, Electronic Benefits Transfers, or State Disability Assistance Program, are similarly not subject to garnishment. *MCL § 400.63*. Finally, Social Security benefits are not subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. *42 U.S.C. § 407(a); MCR 3.101(K)(2)(a)*.

Michigan's State Income Tax Garnishment Law

Michigan is the only state which allows private judgment-creditors to garnish an individual's State Income Tax refund to be applied toward the unpaid judgment balance. *MCL § 600.4061a* For a $6.00 filing fee payable to the State of Michigan, judgment-creditors may begin filing State Income Tax Garnishments beginning on November 1st and continuing until December 31st for the year to be garnished. Pursuant to *MCL § 600.4061a(1)*, upon receipt of a State Income Tax Garnishment, the state treasurer shall do all of the following:

(a) Calculate the amount available from the judgment-debtor's refund to satisfy all or part of the garnishment, and within 90 days after establishing other liability, for which the state tax refund or credit may be applied,

do both of the following:

(i) File with the court a verified disclosure that identifies the intercepted amount, less any setoff, counterclaim, or other demand of the state against the defendant.

(ii) Serve upon the plaintiff and defendant a copy of the disclosure described in subparagraph (i).

(b) Unless notified by the court that objections to the writ of garnishment have been filed, deposit the amount available for the garnishment with the clerk of the court or the plaintiff's attorney of record, or if not represented, the plaintiff or plaintiff's designee.

(2) Objections to the writ of garnishment of a tax refund shall be filed with the court within 14 days after the date of service of the disclosure on the defendant.

In terms of exemptions, the Michigan Court of Appeals in *Asset Acceptance Corp. v Hughes*, 268 Mich.App 57, 706 NW2d 446 (2005) held that in general, under Michigan law, a tax credit or refund may be garnished. *MCL § 600.4061a.* In *Hughes,* the Defendant argued that when a source of funds exempt from garnishment is used to pay rent (the sole source was from Social Security benefits), and said rent subsequently results in a tax credit, then the tax credit should also be exempt from garnishment. The Court of Appeals disagreed. *Id,* at 60.

"Without question, Social Security benefits, when placed in defendant's credit union account, retained the quality of monies. However, once defendant paid the money to her landlord in rent, **it no longer retained the quality of monies. Once paid to the landlord, the rent money was in the landlord's control; indeed, it became entirely the landlord's property and was no longer subject to demand and use by the defendant."** ***Id.,*** at 60, 61. (Emphasis added). The *Hughes* Court specifically stated once the Social Security funds became intermingled with other funds (i.e., paid to the landlord in rent, then subsequently were paid to the municipality and then to the state) that the funds "lost any ability to be directly traced back to any one individual. As a result, the funds defendant received as a homestead property tax credit **cannot be said to have come from the same source as the original Social Security benefits**." *Id.*

In short, the Michigan Supreme Court has recognized that funds originating from a taxpayer's State Homestead Property Tax Credit **are not** exempt from garnishment, despite the fact that the Homestead Property Tax Credit primarily benefits senior citizens, veterans, the blind or disabled, or those with low incomes. *Butcher v. Dep't. of Treasury,* 425 Mich. 262, 274; 389 N.W.2d 412 (1986). The Supreme Court acknowledged that along with Michigan's disadvantaged population, the very wealthy are potentially entitled to claim the Homestead Property Tax Credit on their tax returns,just as any other property owner or renter may, subject to limitation on the percentage they may claim depending on their incomes. *MCL§206.520(8)* In light of this fact, the credit cannot be considered a form of public assistance benefit. *Hughes,*at 62. .

Michigan Licensing of Debt Collectors

The 2 Michigan statutes governing debt collection, *MCL §339.901 et seq.,* and *MCL §445.251 et seq.* closely mirror their federal counterpart, the Fair Debt Collection Practices Act, *15 U.S.C. §§1692-1692p*, in both substance and application. Debt collectors must be licensed in the State of Michigan, if they are collecting the debts of others, unless the collection activities are limited to interstate communications. *MCL § 339.904(1).*

Under the Michigan statute, a collection agency **does not include:**

i. A regular employee when collecting amounts for 1 employer, if all collection efforts are carried on in the name of the employer;

ii. A state or nationally chartered bank when collecting its own claims;

iii. A trust company when collecting its own claims;

iv. A state or federally chartered savings and loan association when collecting its own claims;

v. A state or federally chartered credit union when collecting its own claims;

vi. A licensee under Act No. 21 of the Public Acts of 1939, as amended, being sections 493.1 to 493.26 of the Michigan Compiled Laws;
vii. A business licensed by this state under a regulatory act in which collection activity is regulated;
viii. An abstract company doing an escrow business;
ix. A licensed real estate broker or salesperson if the claims being handled by the broker or salesperson are related to or in connection with his or her real estate business;
x. A public officer or person acting under a court order;
xi. An attorney handling claims and collections on behalf of clients and in the attorney's own name.

The Michigan Department of Licensing and Regulatory Affairs requires a collection agency to file and maintain in force for each license, a corporate surety or a cash bond conditioned upon the faithful accounting of all money collected upon accounts entrusted to the collection agency. The bond must be in a form prescribed by the department, in a sum the department considers necessary, but for not less than $5,000.00 nor more than $50,000.00. The bond shall be for the benefit of a person damaged by the wrongful taking of money collected by the agency, or failure of the collection agency to report or remit proceeds of collections made. A person injured may bring an action upon the bond. The aggregate liability to all injured persons shall not exceed the sum of the bond. The surety on the bond shall have the right to cancel the bond, upon giving 30 days' written notice to the department, and after that date shall be relieved of liability for a breach of condition occurring after the effective date of the cancellation. An action on a bond shall not be commenced after the expiration of 1 year from the effective date of cancellation of the bond. *MCL §339.907*.

Pleading a Prima Facie Collection Case in Michigan – Original Creditor vs. Assignee

Michigan's Supreme Court has characterized MCR 2.111(B)(1) as consistent with a "notice pleading environment." *Roberts v Mecosta Co Gen Hosp (After Remand)*, 470 Mich 679,700 n 17; 684 NW2d 711 (2004). Michigan Court Rule 2.111(1) requires a complaint to contain "[a] statement of the facts, without repetition, on which the pleader relies in stating the cause of action, with the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend . . . ." *MCR 2.111(B)(1).* The primary function of a pleading in Michigan is to give notice of the nature of the claim or defense sufficient to permit the opposite party to take a responsive position. *Stanke v State Farm Mut Automobile Ins Co*, 200 Mich App 307, 317; 503 NW2d 758 (1993).

When a complaint is based upon a written instrument, Michigan law requires that the written instrument or its relevant parts be attached to the pleading as an exhibit, unless the instrument is (a) a matter of public record in the county in which the action is commenced, and its location in the record is stated in the pleading; (b) in the possession of the adverse party and the pleading so states; (c) is accessible to the

pleader and the pleading so states, giving the reason; (d) of a nature that attaching the instrument would be unnecessary or impractical and the pleading so states, giving the reason. *MCR 2.113(F)(1).*

A recent unpublished Michigan Court of Appeals decision held that it is not necessary to attach a copy of a *signed* credit card agreement to its complaint. *Unifund CCR Partners v. Nishawn Riley,* Michigan Court of Appeals Case No. 287599, February 18, 2010. *MCL 445.862(a)* provides: [a] retail charge agreement shall be in writing and signed by the buyer or the authorized representative of the buyer. *A retail charge agreement shall be considered signed and accepted by the buyer if after a request for a retail charge account the agreement or application for a retail charge account is in fact signed by the buyer or if the retail charge account is used by the buyer or by another person authorized by the buyer.* . . . [Emphasis added.] As such, a claim which is premised on the existence of a retail charge agreement can be shown from defendant's use of the credit card, with no requirement to attach the signed agreement. In the absence of a signed agreement, attaching a copy of the credit card terms and conditions would satisfy the pleading requirements of *MCR 2.113(F)(1). Id.,* at 3.

Along with the dramatic increase in consumer collection matters, Michigan has seen a sharp rise in the number of assignments of *purchased debt and assigned claims*. The Michigan Supreme Court has recognized the right of the assignee of a debt to bring an action as the real party in interest, where the assignment was for collection purposes. *Kearns v. Michigan Iron & Coke Co., 66 NW 2d 230;* 340 Mich 577 66 NW 2d 230 (1954). The Michigan Court Rules mirror the statutory provision which requires that "an action must be prosecuted in the name of the real party of interest". *MCR 2.201(B) MCL §600.2041.* An assignee must plead the assignment of the debt from the assignor within the body of the complaint in order to establish that it is the real party in interest sufficient to bring the cause of action. *Masterspark Co. v. Hickerson,* 211 Mich. 411, 415 (1920). Under *MCR 2.113(F),* it is not necessary to attach a copy of the proof of assignment to the complaint, since the agreement between the original creditor and the assignee has no relevance to the collection action filed against the debtor.

When collecting an assigned debt, it is important to determine whether the underlying debt was in default at the time of assignment from the original creditor. While it is well-established that a creditor is not considered to be a debt collector under the FDCPA (*See MacDermid v. Discover Fin. Servs.*, 488 F.3d 721, 734-35 (6th Cir. 2007)), neither is an assignee of a debt **that was not in default when assigned**. *See Wadlington v. Credit Acceptance Corp.*, 76 F.3d 103, 106 (6th Cir. 1996). (Emphasis added).

Regulation of Commercial and Consumer Debts in Michigan

Just as the Fair Debt Collection Practices act was drafted to protect people from unfair, deceptive, and outrageous practices, Michigan has followed suit with 2 statutes that also address abuses in debt collection: Article 9 of the Occupational Code on debt collection, codified at *MCL §339.901 et seq.,* deals

with the business of debt collection. The Collection Practices Act, codified at *MCL §445.251 et seq.* deals with debt collection practices by "regulated persons" who are **not** debt collectors according to the first act.

Michigan consumers who believe a debt collector has violated the collections statutes may file a Michigan claim along with a federal debt collection claim. Most consumers prefer the federal venue, because the remedies for violation of the federal collection statute are not as generous under Michigan law. Both Michigan and federal laws provide for actual damages and attorney fees, but the statutory damages under the federal act may be up to $1000.00, plus actual damages, if proven. Under the Michigan statutes, statutory damages are $50.00 in general, and $150.00 for willful violations. *MCL §339.916.* Additionally, the federal venue is often strategically preferred for violation cases, because most debt collection actions are filed in state court. While consumers may bring Fair Debt Collection Practices Act cases in federal court, Michigan case law generally recognizes that the debt collection suit itself may not be added as a counterclaim.

The Michigan Collection Practices Act covers only *consumer debts,* which are defined as debts arising out of a "purchase made primarily for personal, family, or household purposes." *MCL §445.251(a).* The Act does not apply to collection efforts on business debts, even where such collection efforts involve an individual guarantor. *See Margita v. Diamond Mortgage Corp.,* 159 Mich. App. 181, 406 N.W.2d 268, 270 (1987), (concluding that the plain use of the statutory language "primarily for personal, family, or household purposes" demonstrates the Legislature's intent to exclude obligations incurred for business purposes, and thus, finding that Credit Reporting Practices Act "is directed at the nature of the transaction, not the persons involved.")

Collecting on *secured debts* in Michigan is often effectuated by filing a breach of contract suit for monetary damages, in addition to a claim and delivery count to recover the property securing the subject debt. *MCL §600.2920* In situations where the creditor has good cause to believe the debtor may sell, transfer, encumber, or hide the property securing the debt, under *MCR 3.105(E),* the plaintiff may file a verified motion for possession, pending final judgment.

When collecting upon an *unsecured debt* in Michigan, such as a credit card debt, it is important not to run afoul of state laws regarding allowable interest rates for civil actions. *MCL §438.32* provides that any seller or lender who enters into a contract that charges an interest rate in excess of the maximum allowed by law is barred from the recovery of any interest at all. The lender is also barred from collection charges, attorney fees and court costs. In fact, the borrower or buyer, on the other hand, may recover his or her attorney fees and court costs from the usurious seller or lender. Michigan's criminal usury statute *MCL § 438.41* makes it a crime for any person to charge interest at a rate exceeding 25% per annum. For business loans, *MCL § 438.61* provides that a state or national chartered bank, savings bank, savings

and loan association, credit union, insurance carrier, finance subsidiary of a manufacturing corporation, or a related entity may charge any rate of interest, if the parties agree in writing, not subject to the normal 25% criminal usury cap. An individual or company that is not a regulated lender may make business loans with a rate of interest not to exceed the 25% criminal usury cap.

Michigan Court Filing Fees & the Costs of Collecting on a Judgment

Filing fees for civil matters are uniform across the state of Michigan and controlled by statute. The District Courts hear civil cases where the amount in dispute is under $25,000. *MCL §600.8301*. Note that in Michigan, only Circuit Courts have equitable powers; so counterclaims filed in District Court which pray for equitable relief (think: conversion, or any sort of fraud claim), should be subject to dismissal under *MCL §600.8315*. In District Court, the filing fee is $45.00 for claims over $600 up to $1,750. For claims over $1,750 and up to $10,000, the filing fee is $65.00. For a claim over $10,000 the filing fee is $150.00. *MCL §600.8371*. Pursuant to *MCL §600.5738*, the jury demand fee is $50.00 in District Court.

Civil matters with an amount in controversy over $25,000 must be filed in Circuit Court. *MCL §600.601.* The filing fee for Circuit Court actions is $150.00. Jury demands in Circuit Court require payment of an $85.00 fee. *MCL § 600.2529(1)(c).*

Process Server fees in Michigan range from $21.00 for personal service of a summons and complaint *MCL § 600.2559(1)(a)* to $35.00 for levy under or service of an order to seize property, *MCL §600.2559(1)(h),* plus mileage. Mileage under *MCL § 600.2559(1)* is computed as 1-1/2 times the rate allowed by the State Civil Service Commission for employees in the state classified Civil Service. Fees may not exceed 75 miles each way. *MCL § 600.2555.* Mileage rate charts for the State of Michigan may be accessed at: http://courts.mi.gov/scao/resources/other/mileage.pdf.

Sheriff or Court Officer fees for sale of property seized under an order for the seizure of property under *MCL §600.2559(1)(j)* entitles the officer to retain 7% of the first $5,000 realized from the sale, and 3% of any receipts exceeding the first $5,000. The fee for filing of a writ of garnishment, attachment, execution, or judgment debtor discovery subpoena for purposes of a creditors' examination is $15.00.*MCL §600.2529(1)(h).*

Satisfying the Judgment – Beware of Michigan's Judgment Lien Statute

Michigan's Judgment Lien Statute, *MCL § 600.2801 et seq.*, allows a judgment creditor to file a judgment lien for the amount of the judgment, which will attach to any real property located in that county, in which the judgment debtor has an interest. The function of the Michigan Judgment Lien Act (MJLA) is that once issued by the court and recorded with the Register Deeds in the County in which the judgment is entered,

it creates an encumbrance on the judgment debtor's real property, which must be paid when the property is refinanced or sold. *MCL §600.2819*

However, an unpublished opinion from the Michigan Court of Appeals, *Thomas v. Dutkavich,* 2010 Mich.App. LEXIS 2049 (2010) has raised serious questions as to the effectiveness of the judgment lien as a means to collect upon the judgment. As a threshold issue, the *Dutkavich* court underscored the fact that the MJLA does not allow for a means to foreclose upon the lien. *MCL § 600.2819.* In *Dutkavich,* the judgment-debtors conveyed their property via warranty deed to a third party, but failed to pay the judgment-creditor holding the judgment lien. According to the Court's opinion, under the clear and unambiguous language of *MCL § 600.2819*, it is only the judgment debtor, not any subsequent third-party buyers, who is obligated to pay the judgment creditor from real estate proceeds. In short, the *Dutkavich* Court would not allow the judgment creditor to pursue the third party buyer of the property for the judgment balance; however, because the lien was not satisfied, the Court held that when the MJLA is read in conjunction with MCL § 600.2813(2), it allows for the continued attachment of a judgment lien on the real estate despite new ownership, where the lien was not fully satisfied by payment of the underlying judgment. *Id.* at 24. So, while there is no means to actively pursue the non-party third-party buyer of the property pursuant to the judgment lien, the lien remains attached to the real estate; where presumably it may be paid upon sale, conveyance, or refinance.

The Newest Wrinkle – The Telephone Consumer Protection Act

The Telephone Consumer Protection Act, *47 U.S.C. § 227* (TCPA) makes it unlawful (A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice to any telephone number assigned to a paging service, cellular telephone service…or any service for which the called party is charged for the call. *47 U.S.C. § 227(b)(1)(A)(iii).* Thus, to establish a prima facie case under *§ 227(b)(1)(A),* a plaintiff must show that: "(1) a call was placed to a cell or wireless phone; (2) by the use of any automatic dialing system and/or leaving an artificial or prerecorded message, and (3) without prior consent of the recipient." *Purgliese v. Professional Recovery Service, Inc.*, 2010 WL 2632562 at *7 (E.D. Mich. June 29, 2010).The TCPA provides for a private right of action and permits a party to recover actual monetary loss for a violation of *§ 227(b)(1)(A),* "or to receive $500 in damages for each such violation, whichever is greater." *47 U.S.C. § 227(b)(3)(B); Mims v. Arrow Financial Services,LLC*, 132 S.Ct. 740 (2012).

In a recent holding out of the U.S. District Court for the Eastern District of Michigan, *Harris v. World Financial Network National Bank, et al,* Case No. 10-14867, Plaintiff Dan Harris alleged that the Defendants violated 47 U.S.C. § 227, the Telephone Consumer Protection Act (TCPA), and MCL

§ 445.251, the Michigan Collection Practices Act. The Plaintiff alleged that he received more than 50 "robo-calls" on his cell phone for a debt he did not owe. Hon. Sean Cox ruled in Plaintiff's favor, awarding close to $65,000.00 in damages, consisting of statutory damages, pursuant to 47 U.S.C. § 227(b)(3)(B),for each phone call and prerecorded message Defendants placed to Plaintiff's cellular phone, in addition to treble damages, pursuant to 47 U.S.C.§ 227(b)(3), for the phone calls and prerecorded messages Defendants placed to Plaintiff's cellular phone after he first notified Defendants that they had the wrong number and were pursuing the wrong party.

Conclusion

The downturn in the U.S. economy has made it more challenging for Michigan citizens to meet their financial obligations. While this may mean increased volume for collection firms, the trend has also given rise to a virtual cottage industry of consumer litigation claims for alleged violations of the Fair Debt Collection Practices Act and its progeny. Thus, a working knowledge of Michigan's debt collection laws is vital not only to the success of a collections practice, but also the best defense to the ever-expanding regulation of debt collection practices on the state and national level.

Please be advised that this is not intended as legal advice. Changes to laws, statutes, regulations and costs can and do occur. We recommend that you contact an attorney for advice specific to your legal matters and your state.