

**IN THE COURT OF APPEALS OF IOWA**

No. 0-256 / 09-1574  
Filed May 12, 2010

**BAYVIEW LOAN SERVICING, L.L.C.,**  
Plaintiff-Appellee,

**vs.**

**JEFFREY C. FORSTER,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Marion County, Paul R. Huscher,  
Judge.

Defendant appeals from a district court ruling granting the plaintiff a  
permanent injunction. **AFFIRMED.**

R. Bradley Skinner of Skinner Law Office, P.C., Altoona, for appellant.

Michael J. Cunningham and Kevin Cunningham of Howe, Cunningham,  
Lowe & Kelso, P.L.C., Urbandale, for appellee.

Considered by Vaitheswaran, P.J., Doyle, J., and Mahan, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**DOYLE, J.**

The facts giving rise to this suit for injunctive relief began with Jeffrey Forster's purchase of several parcels of real estate in Jasper County, Iowa, on contract from Farrell Properties. Farrell Properties sold the contract to Bayview Loan Servicing, L.L.C., a loan servicing corporation located in Florida. Forster defaulted on the contract payments, and Bayview reported his default to the credit reporting bureaus. Forster then sold the properties and used the proceeds from the sale to satisfy his obligation to Bayview. He believed that upon doing so, Bayview would clear his credit with the credit reporting bureaus. When that failed to happen, Forster, in the antithesis of the refrain from a Jimmy Buffett song, "If the phone doesn't ring, it's me,"<sup>1</sup> began repeatedly calling Bayview in 2008.

Due to the nature of the calls, Bayview's attorney sent Forster a letter in January 2009 that stated:

It has come to our attention that you have frequently, excessively and inordinately contacted Bayview Loan Servicing, LLC, demanding that Bayview clear the reports that it has made to the credit reporting bureaus regarding your loan. Bayview cannot delete information that was accurately reported to the Bureaus. . . .

These phone calls are viewed as an attempt on your part to harass, harangue, and coerce Bayview Loan Servicing, LLC, its agents, employees and officers into taking action which they are not legally required to take.

You are hereby directed to cease and desist all telephone contact with Bayview Loan Servicing, LLC, its officers, employees and agents.

Forster continued to call Bayview after receiving that letter. Bayview consequently filed a petition in May 2009, seeking a temporary and permanent

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<sup>1</sup> Jimmy Buffett, *If the Phone Doesn't Ring, It's Me*, Last Mango in Paris (MCA Records 1985).

injunction against Forster ordering him “to forever cease and desist from contacting [Bayview] and its employees, agents and officers.” At the hearing on the petition, Forster testified his last phone call to Bayview was made in March 2009. He stated he would not contact Bayview again “[b]ecause it’s obvious they don’t want to talk to me.” Bayview’s counsel then asked:

Q. Mr. Forster, would you agree to a court order prohibiting you— A. No.

Q. —from contact— A. No.

Q. —contacting them? A. No. That’s the whole premise of this case. You’ve been—you were asking [my attorneys] to do that in—in—any number of times, and I said no.

Joann Snyder, Bayview’s vice president of commercial servicing, also testified at the hearing. She described a telephone call with Forster in March 2009 during which Forster told her supervisor to “have the bitch leave the room.” She stated he “was very loud and demanding” throughout that conversation. Snyder testified there were numerous other calls made by Forster to other Bayview employees, which were documented in the company’s computer servicing system comment section. She stated Bayview had around eighty-five pages of entries on that system detailing Forster’s telephone calls. Some of those entries were admitted as an exhibit over Forster’s hearsay objections.

An employee entry from a telephone call with Forster in December 2008 related that Forster

started to raise his voice and call me names using profanity. I asked him politely to refrain from using those words and then he said he could say anything he wanted and stated (foul word) just fix my credit report and do whatever the (foul word) you need to go get it done. I advised mr. forster that I would be terminating the call and he continued to use foul language. I terminated the call.

Another employee entry documenting a call in March 2009 stated:

Mr Forster was abusive in his comments regarding Bayview's officers Ms Snyder was also involved in the conversation and Mr Forster was abusive to her as well I advised Mr Forster to stop calling Bayview and to direct his calls to Bayview's local counsel . . . . Mr Forster continued to use abusive language and repeated accusations that [Bayview] promised to correct his credit. I advised him to call [our attorney] and that I would need to disconnect the call. Mr Forster threatened to sue Bayview and others. I had to discontinue the call.

Forster immediately called back, demanding

that all credit bureau reporting be removed . . . . Said he wasn't listening to anything we had to say and did not want us to talk. Continually requested we SHUT UP. . . . Borrower does not want to talk to our counsel and called him worthless . . . . [R]equested he stop harassing Bayview with his calls He continued to yell that he wanted his credit reporting removed. . . . Borrower during conversation was rude and derogatory. . . .

The servicing system comments show Forster's telephone calls continued into May 2009, despite his testimony otherwise. An entry from that month stated Forster "continues to harass Bayview and has been making threats of law suits against our Managing Director. In fact he has obtained the Managing Director's telephone number and leaves lengthy messages which are disturbing and disruptive to Bayview's business."

Following the hearing, the district court ruled in a calendar entry: "Petitioner's request for permanent injunction is granted. Respondent shall not initiate contact with [Petitioner] in any manner." Forster appeals.

Forster first claims the district court erred in admitting the servicing system exhibit, as it was inadmissible hearsay. Bayview responds the exhibit was admissible under the business records exception to the hearsay rule. We review this issue for the correction of errors at law. *GE Money Bank v. Morales*, 773 N.W.2d 533, 536 (Iowa 2009).

A business record is admissible under Iowa Rule of Evidence 5.803(6) if it can be shown it was

made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and the regular practice of that business activity was to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with rule 5.902(11), rule 5.902(12), or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.

Forster argues Bayview did not show the servicing system comments were “made at or near the time” of the telephone calls. We disagree. Snyder testified that as the vice president of commercial servicing for Bayview, she was responsible for the records “pertaining to activity on the Jeffrey Forster loan.” She explained it is “a Bayview policy that anytime there is a contact made with a customer there is a simultaneous note made in—to the credit comments.” This testimony provided adequate foundation for admission of the exhibit under rule 5.803(6). We find no merit to Forster’s contention as to the trustworthiness of the record.

Forster next claims the district court erred in entering the permanent injunction. Our review of this issue is *de novo*. *Opat v. Ludeking*, 666 N.W.2d 597, 603 (Iowa 2003). “[A] party requesting injunctive relief must establish ‘(1) an invasion or threatened invasion of a right, (2) substantial injury or damages will result unless an injunction is granted, and (3) no adequate legal remedy is available.’” *Id.* at 603-04 (citation omitted). Forster argues none of these elements were met. We conclude otherwise.

Snyder testified Forster's telephone calls "have taken up staff time. It's intimidated staff. They felt threatened by some of the calls, as it is evidenced in the comments that they have made in the system." Some of the servicing system comments describe Forster as "abusive," "angry," "agitated," "insulting," and "derogatory." He called multiple times a day, sometimes speaking to Bayview employees and other times leaving angry voicemail messages. Snyder testified Forster usually spoke in a loud, demanding tone of voice and was exceedingly argumentative with Bayview's employees, who spent a considerable amount of time dealing with him.<sup>2</sup> We believe the foregoing shows Bayview's rights were invaded and that it would suffer substantial injury or damages unless the injunction issued. See *Planned Parenthood of Mid-Iowa v. Maki*, 478 N.W.2d 637, 640 (Iowa 1991) (finding an injunction appropriate where a person's actions interfered with a business's right and ability to conduct its business).

We also believe Bayview showed other legal remedies would be inadequate. Forster argues "there could be criminal or intentional torts that could be sought by Bayview." See, e.g., Iowa Code § 708.7(1)(a) (2009). However, the "test is whether the facts in the case show a necessity for intervention of equity in order to protect rights cognizable in equity." *Hughes A. Bagley, Inc. v. Bagley*, 463 N.W.2d 423, 425 (Iowa Ct. App. 1990). "Plaintiffs are not precluded

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<sup>2</sup> Forster asserts a loan servicing company, such as Bayview, "by its very nature, in these economic times, is going to have heated phone conversations or conversations that may make people feel uncomfortable." The record shows, however, that Forster was more than just a disgruntled borrower. His persistently hostile telephone calls went well beyond what a company may experience in its normal course of business, as evidenced by Snyder's testimony at the hearing and the servicing system comments. This finding is further supported by Forster's agitated demeanor at the hearing, during which he continually interrupted opposing counsel, his own counsel, and the court. See, e.g., *Opat*, 666 N.W.2d at 604-05 (finding defendant's demeanor at trial relevant in assessing appropriateness of injunctive relief).

from seeking the issuance of a permanent injunction merely because criminal penalties exist which are designed to deter unlawful acts.” *Id.*; see also *Opat*, 666 N.W.2d at 604 (“The mere existence of criminal penalties does not preclude a party from obtaining injunctive relief.”). “Generally, an injunction will lie to restrain repeated trespasses so as to prevent irreparable injury and a multiplicity of suits.” *Planned Parenthood of Mid-Iowa*, 478 N.W.2d at 639-40.

Forster’s telephone calls did not stop until Bayview sought injunctive relief. We do not find it significant that Forster did not contact Bayview while this action was pending. Nor do we find it significant that he testified he would not contact Bayview in the future, as he was adamantly opposed to agreeing to an injunction preventing him from doing just that. Bayview requested Forster to stop calling on numerous occasions, asking that he instead contact Bayview’s counsel. Forster refused to do so. Bayview then sent Forster a strongly worded letter from its counsel demanding that he stop. Forster’s telephone calls continued. We conclude this persistent and harassing conduct warranted injunctive relief. See *Opat*, 666 N.W.2d at 605 (noting respondent’s continued conduct toward petitioner even after being convicted of a criminal offense for her conduct showed court intervention was warranted).

Finally, we reject Forster’s claim that “[i]t seemingly appears that Bayview is seeking its injunction to prevent Forster from contacting them regarding . . . subsequent litigation against Bayview and its employees.” Nothing in the record supports that supposition. The injunction simply prohibits Forster himself from initiating contact with Bayview. Upon weighing the relative hardships on the

parties by the grant or denial of injunctive relief, *see id.* at 604, we determine the district court properly granted the injunction and affirm its judgment.

**AFFIRMED.**