

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 CA 2172

ADVOCATE FINANCIAL, L.L.C.

VERSUS

JAMES P. DESONIER, INDIVIDUALLY AND AS PROPRIETOR OF
JAMES DESONIER, ATTORNEY AT LAW

DATE OF JUDGMENT: May 2, 2008

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
(NUMBER 2007-12114, DIV. "C"), PARISH OF ST. TAMMANY
STATE OF LOUISIANA

HONORABLE PATRICIA T. HEDGES, JUDGE

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and
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Advocate Financial, L.L.C.

James P. DeSonier
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Defendant/Appellee
In Proper Person

BEFORE: PARRO, KUHN AND DOWNING, JJ.

Disposition: REVERSED.

KUHN, J.

Plaintiff-appellant, Advocate Financial, L.L.C. (Advocate) appeals the trial court's judgment granting injunctive relief to defendant-appellee, James P. DeSonier. We reverse.

PROCEDURAL AND FACTUAL BACKGROUND

Advocate is a business that lends money to lawyers and litigants to fund expenses of litigation. DeSonier, an attorney, executed in his individual capacity and on behalf of his law firm, an individual guaranty agreement, a law firm guaranty, a law firm security agreement, and a law firm promissory note, the latter of which was in the principal amount of \$156,239.63 with interest at the rate of 16.75% per annum, in favor of Advocate. In addition, several of DeSonier's clients executed promissory notes in favor of Advocate, all of which were guaranteed by DeSonier. Each client also executed a client security agreement, granting Advocate a security interest in the client's respective litigation recovery.

On May 2, 2007, Advocate instituted this lawsuit by filing a petition for damages. In its petition, Advocate also sought recognition of its security interest in DeSonier's present and future rights, title, and interest in attorney's fees and income or proceeds from the litigation of those clients who had executed promissory notes on behalf of the lender after it had unsuccessfully made written demand for payment from DeSonier. On June 19, 2007, DeSonier filed a motion for a temporary restraining order (TRO),¹ seeking to enjoin Advocate from contacting any third party and asserting rights to any proceeds due to DeSonier. In support of entitlement to the TRO, DeSonier averred that Advocate had contacted the

¹ The motion also seeks damages.

defendants in the lawsuit of his client, Jason Pellegrin, notifying them of its security interest in the recovery.²

The trial court signed an order on June 19, 2007, issuing the TRO “immediately and without bond, inasmuch as there are not costs involved ordering [Advocate] to cease and desist from contacting any third party, asserting any rights of assignment or payment” and set a hearing on a preliminary injunction. A hearing was held on July 9, 2007, at which the affidavit of Marilyn S. O’Hare, Advocate’s Director of Operations, was admitted into evidence. That affidavit included attachments of all the pertinent contracts, including those executed by DeSonier, individually and on behalf of his law firm, as well as those executed by his clients; the UCC form filed with the secretary of state along with its confirmation of receipt; and the notices to the various defendants in the lawsuits of DeSonier’s clients in which Advocate claims an interest. After argument, DeSonier requested that the trial court issue a permanent injunction. On August 3, 2007, the trial court issued a judgment in favor of DeSonier, “perpetuating the writ of injunction and forever enjoining, restraining and prohibiting [Advocate] from communicating with any party not a party to this litigation, concerning allegations or rights [Advocate] is asserting herein.” The trial court also ordered Advocate to pay DeSonier \$875.00 in attorney’s fees.³ This appeal by Advocate follows.

² The motion averred that the notice included a false statement that DeSonier represented Katie Adams. Copies of a subsequently-dated notice sent by Advocate to the defendants in the Pellegrin lawsuit claimed an interest only in Pellegrin’s recovery and show that Katie Adams was actually a defendant named in that litigation.

³ Although DeSonier’s claim for damages was not adjudicated, we nevertheless find this appeal is properly before us. *See* La. C.C.P. art. 3612B.

DISCUSSION

An injunction shall be issued in cases where irreparable injury, loss, or damage may otherwise result to the applicant, or in other cases specifically provided by law. La. C.C.P. art. 3601A. The writ of injunction is a harsh, drastic, and extraordinary remedy, and should only issue in those instances where the moving party is threatened with irreparable loss or injury and is without adequate remedy at law. “Irreparable injury” is considered to be a loss sustained by an injured party, which cannot be adequately compensated in money damages or for which such damages cannot be measured by a pecuniary standard. *Sorrento Companies, Inc. v. Honeywell Int’l, Inc.*, 04-1884, p. 9 (La. App. 1st Cir. 9/23/05), 916 So.2d 1156, 1163, *writ denied*, 05-2326 (La. 3/17/06), 925 So.2d 541.

Generally, a party seeking the issuance of a preliminary injunction must show that he will suffer irreparable injury, loss, or damage if the injunction does not issue and must show entitlement to the relief sought; this must be done by a *prima facie* showing that the party will prevail on the merits of the case. Appellate review of a trial court’s issuance of a preliminary injunction is limited. The issuance of a preliminary injunction addresses itself to the sound discretion of the trial court and will not be disturbed on appeal absent a clear abuse of discretion. *Id.*

A petitioner seeking a preliminary injunction is required to offer less proof than is necessary in an ordinary proceeding for a permanent injunction. The issuance of a permanent injunction takes place only after a trial on the merits, in which the burden of proof must be founded on a preponderance of the evidence. The manifest error standard is the appropriate standard of review for the issuance of

a permanent injunction. *State Mach. & Equip. Sales, Inc. v. Iberville Parish Council*, 05-2240, p. 4 (La. App. 1st Cir. 12/28/06), 952 So.2d 77, 81.

In support of his entitlement to injunctive relief, DeSonier did not offer any evidence. Thus, the trial court apparently relied on the affidavit and attached documents submitted by Advocate in ruling on DeSonier's petition. And despite the language utilized in the judgment, "forever enjoining, restraining and prohibiting [Advocate] from communicating with any party not a party to this litigation," the matter before the trial court clearly was set for a determination of whether DeSonier was entitled to a preliminary injunction. Thus, our review focuses on whether the trial court abused its discretion.

On appeal, Advocate urges that nothing in the record supports a finding that DeSonier will suffer irreparable injury, loss, or damage if the injunction does not issue. Moreover, Advocate contends that the notices it sent to DeSonier's clients were in accordance with law, citing La. R.S. 10:9-412(a), and thus, DeSonier did not make a *prima facie* showing that he would prevail on the merits of his case.⁴

From our review of the record in this matter, we find that the trial court abused its discretion in determining that DeSonier showed he will suffer irreparable injury if Advocate is not enjoined from communicating with "any party not a party to this litigation," i.e., specifically the defendants in the lawsuits of DeSonier's

⁴ La. R.S. 10:9-412(a) provides in pertinent part:

Discharge of tortfeasor. ... [A] person obligated on a tort claim may discharge its obligation by paying the debtor until, but not after, the person receives a notification, authenticated by the debtor or the secured party, that the amount due has been assigned and that payment is to be made to the secured party. After receipt of the notification, the person may discharge its obligation by paying the secured party and may not discharge the obligation by paying the debtor.

clients who executed promissory notes and security agreements in favor of Advocate and are in default of repayment. Without addressing the application of La. R.S. 10:9-412, we conclude that any loss DeSonier suffers individually, on behalf of his law firm, or as a guarantor on the notes executed by his clients in favor of Advocate would certainly be monetary in nature for which he could be compensated in the event he were successful at a trial on the merits. *See Bagert v. Goldsmith*, 504 So.2d 648, 651 (La. App. 4th Cir.), *writs denied*, 508 So.2d 74 and 76 (La. 1987). DeSonier urges on appeal that “he was damaged and suffered irreparable injury by Advocate’s [correspondence] to third parties,” suggesting that the lender’s behavior in sending notices to defendants in those lawsuits for which his clients had executed promissory notes and security agreements was done to harass and manipulate. To the extent that DeSonier suggests that Advocate has harassed or defamed him, his remedy in tort, *see* La. C.C. art. 2315, would give rise to a judgment in damages. *See Vartech Systems, Inc. v. Hayden*, 05-2499, p. 16 (La. App. 1st Cir. 12/20/06), 951 So.2d 247, 261. Thus, DeSonier has failed to show irreparable injury, and the trial court abused its discretion in granting injunctive relief on the showing made.

Advocate also challenges the trial court’s award of attorney’s fees to DeSonier. It is well established that in the absence of legal authority, contract or statute, a party is not entitled to attorney’s fees. *Walsh & Bailey v. Lofaso*, 05-1476, p. 6 (La. App. 1st Cir. 6/9/06), 938 So.2d 999, 1003. Considering that the trial court abused its discretion in granting injunctive relief to DeSonier, we find no basis to support the award of attorney’s fees.

DECREE

For these reasons, the trial court's judgment "perpetuating the writ of injunction and forever enjoining, restraining and prohibiting [Advocate] from communicating with any party not a party to this litigation, concerning allegations or rights [Advocate] is asserting herein" and awarding \$875.00 in attorney's fees to DeSonier is reversed. Trial and appeal costs are assessed against defendant-appellee, James P. DeSonier.

REVERSED.