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2016 IL App (4th) 160645-U
NO. 4-16-0645

FILED
September 20, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

TATE & LYLE INGREDIENTS AMERICAS LLC, a)	Appeal from
Delaware Limited Liability Company,)	Circuit Court of
Plaintiff-Appellee,)	Macon County
v.)	No. 16CH160
JAMES G. CRAIG,)	
Defendant,)	
and)	Honorable
ARCHER DANIELS MIDLAND COMPANY,)	Thomas E. Little,
Intervenor-Appellant.)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Knecht and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, finding the trial court did not abuse its discretion in denying Archer Daniels Midland Company’s motion to vacate the temporary restraining order.

¶ 2 Plaintiff, Tate & Lyle Ingredients Americas LLC (Tate & Lyle), filed a complaint against defendant, James G. Craig, alleging theft of trade secrets and breach of contract. Tate & Lyle also sought a temporary restraining order (TRO) against Craig to prevent him from divulging trade secrets to his new employer, Archer Daniels Midland Company (ADM). The trial court issued an *ex parte* TRO. Thereafter, ADM filed a petition to intervene and a motion to vacate the TRO. The court allowed ADM permissive intervention but denied the motion to vacate the TRO.

¶ 3 In this interlocutory appeal pursuant to Illinois Supreme Court Rule 307(d) (eff.

Jan. 1, 2016), ADM asks that the TRO be vacated or dissolved. We affirm.

¶ 4

I. BACKGROUND

¶ 5 On September 2, 2016, Tate & Lyle filed a two-count complaint against Craig, a former employee, concerning the alleged theft by Craig of trade secrets and the violation or threatened violation of the nondisclosure provisions of the employee agreement between him and Tate & Lyle. In count I, Tate & Lyle set forth a claim under the Illinois Trade Secrets Act (765 ILCS 1065/1 to 9 (West 2014)), alleging Craig deliberately took secret and protected documents from Tate & Lyle prior to his resignation. Craig subsequently began working for ADM. Alleging it would suffer irreparable injury from the disclosure of these trade secrets, Tate & Lyle sought temporary, preliminary, and permanent injunctive relief prohibiting Craig from threatening to disclose or actually disclosing those secrets to any party, including ADM. In support of its complaint, Tate & Lyle submitted affidavits indicating Craig removed or copied proprietary and secret materials which Craig had no business justification to remove or copy, including customer lists, industrial processes, and business plans. Count II set forth a claim of breach of contract based on the employee agreement.

¶ 6 That same day, the trial court issued an *ex parte* TRO, enjoining Craig from working for or continuing his employment with ADM or any other competitor of Tate & Lyle in any department which involves research and development, marketing, and/or the production of industrial starch. The court set a hearing on the preliminary injunction for September 7, 2016.

¶ 7 On September 6, 2016, attorneys for Tate & Lyle and Craig agreed to vacate the September 7, 2016, hearing date. The parties also agreed to continue the TRO and set a hearing for October 3, 2016.

¶ 8 On September 7, 2016, ADM filed a petition to intervene pursuant to section 2-

408 of the Code of Civil Procedure (735 ILCS 5/2-408 (West 2014)). The petition alleged the action between Tate & Lyle and Craig directly impacts ADM and the TRO interferes with the employment relationship and rights of ADM. ADM claimed it is an indispensable party and is entitled to intervene as of right. In the alternative, ADM argued it should be allowed to intervene on a permissive basis. ADM also filed a motion to vacate the TRO.

¶ 9 On September 8, 2016, the trial court held a hearing on ADM’s petition to intervene. Following arguments, the court denied ADM’s petition to intervene as of right but allowed permissive intervention. The court ordered ADM bound by the orders and judgments previously entered and indicated ADM shall not interfere with the control of the litigation. The court also denied ADM’s motion to vacate the TRO. On September 12, 2016, ADM filed a petition for review of the denial of the motion to vacate the TRO pursuant to Illinois Supreme Court Rule 307(d) (eff. Jan. 1, 2016).

¶ 10 II. ANALYSIS

¶ 11 “A [TRO] is a drastic remedy which may issue only in exceptional circumstances and for a brief duration.” *American Federation of State, County & Municipal Employees, Council 31 v. Ryan*, 332 Ill. App. 3d 965, 966, 773 N.E.2d 1196, 1198 (2002). The purpose of a TRO is to allow the trial court to preserve the status quo until it can hold a hearing to determine whether it should grant a preliminary injunction. *Stocker Hinge Manufacturing Co. v. Darnel Industries, Inc.*, 94 Ill. 2d 535, 541, 447 N.E.2d 288, 291 (1983).

¶ 12 A party seeking a TRO must establish by a preponderance of the evidence that it (1) possesses a certain and clearly ascertainable right needing protection, (2) has no adequate remedy at law, (3) will suffer irreparable harm without the TRO, and (4) has a reasonable likelihood of success on the merits. *Lo v. Provena Covenant Medical Center*, 342 Ill. App. 3d

975, 987, 796 N.E.2d 607, 617 (2003). The party seeking a TRO is not required to make out a case which would entitle it to judgment at trial; rather, it only needs to show it raises a “ ‘fair question’ ” about the existence of its right and that the court should preserve the status quo until the case can be decided on the merits. *Stocker Hinge*, 94 Ill. 2d at 542, 447 N.E.2d at 291. On appeal, a trial court’s decision denying a TRO is reviewed under the abuse-of-discretion standard. *Lo*, 342 Ill. App. 3d at 981, 796 N.E.2d at 612.

¶ 13 In the case *sub judice*, Tate & Lyle filed a two-count complaint against Craig, alleging theft of trade secrets and breach of contract. In support of its complaint, Tate & Lyle submitted its employee agreement with Craig, as well as affidavits from Tate & Lyle employees and exhibits purporting to show Craig misappropriated secret and proprietary information prior to resigning from Tate & Lyle and working for its competitor, ADM. In issuing the TRO, the trial court sought to preserve the status quo by enjoining Craig from working for or continuing his employment with ADM or any other competitor of Tate & Lyle in any department involving research and development, marketing, and/or the production of industrial starch. Craig did not appeal the grant of the TRO.

¶ 14 We find ADM has not shown an enforceable right in the granting of the TRO. Tate & Lyle’s complaint is directed against Craig and what he allegedly may have done while in Tate & Lyle’s employ. ADM is not a party under the employee agreement between Tate & Lyle and Craig. Moreover, ADM has not been ordered to terminate Craig’s employment. With only a general interest here, ADM has failed to show it is entitled to intervention as of right and, given that the current litigation is focused on Tate & Lyle and Craig, ADM has also failed to show the trial court abused its discretion in this case.

¶ 15

III. CONCLUSION

¶ 16 For the reasons stated, we affirm the trial court's entry of the TRO.

¶ 17 Affirmed.