

**NOTICE**

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**FILED**

April 28, 2017  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2017 IL App (4th) 160886-U

NO. 4-16-0886

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

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

PRESIDING JUSTICE TURNER delivered the judgment of the court.  
Justice Knecht concurred in the judgment.  
Justice Appleton dissented.

**ORDER**

¶ 1 *Held:* The appellate court affirmed the trial court’s issuance of a preliminary injunction against defendant.

¶ 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. This court affirmed on appeal. Thereafter, the trial court issued a preliminary injunction against Craig, prohibiting him from working in ADM’s industrial starch division.

¶ 3 In this interlocutory appeal pursuant to Illinois Supreme Court Rule 307(a) (eff. Jan. 1, 2016), Craig and ADM argue the trial court erred in granting the preliminary injunction. We affirm.

¶ 4 I. BACKGROUND

¶ 5 Tate & Lyle is a manufacturer of, among other things, industrial starch, which is used in the making of products such as paper, cardboard liner, tissue packaging, tapes, and paints. ADM is a competing manufacturer of industrial starch.

¶ 6 Craig attended the University of Wisconsin, Stevens Point, where he majored in paper science and engineering, and minored in chemistry. After graduating in 2000, he worked as a process engineer for Union Camp Corporation's paper mill in Franklin, Virginia. He was promoted through the engineering ranks and then to shift supervisor in charge of chemical additives. In May 2003, Craig began working as a high-level process engineer for Domtar in Wisconsin. In 2007, Craig went to work for Ciba Specialty Chemicals in Virginia. He then shifted to a job in sales. In July 2010, Craig took a job with Kemira, where he worked on wet-end starch testing.

¶ 7 Craig began working at Tate & Lyle in July 2013. His employee agreement contained a confidentiality provision, which prohibited him from disclosing any confidential, proprietary, or trade secret information either during or after employment. During his time at Tate & Lyle, Craig worked as a technical service engineer, where he visited paper mills, monitored their progress, and tried to make "the best chemical application recommendations." Craig sought opportunities for advancement at Tate & Lyle, and he hoped to get the job of product manager when Lon Pshigoda resigned. Sometime in July 2016, a headhunter contacted Craig about a job at ADM. He filled out an application on July 12 or July 15, 2016. After

having an interview, Craig received an offer from ADM on July 21, 2016, to become the technical service manager and assistant product line manager of industrial starch. He waited a few days to see whether he received a promotion from Tate & Lyle, and when he did not, he accepted ADM's job offer sometime before July 25, 2016.

¶ 8 On July 25, 2016, Craig left the building with his backpack over the lunch hour, which his coworker, Jeremy Iwanski, considered unusual. Suspicious of Craig's activities, Iwanski looked at Craig's desk and found two confidential documents, including a formula for a customer and a significant event report. Iwanski photographed the items, which were gone by the end of the day.

¶ 9 On July 27, 2016, Iwanski observed and photographed a thumb drive storage device docked in Craig's computer. The device was not a Tate & Lyle thumb drive, and although they are used for business purposes and in customer presentations, Craig had no upcoming customer trips.

¶ 10 From July 28, 2016, to August 1, 2016, Craig took a vacation. On August 2, 2016, Craig printed out a document titled "Technical Projects 2016.xls," a spreadsheet that combined information about the status of active industrial starch projects with future sales goals, information about clients, sales volumes, margin dollars, and key customers. Thereafter, Craig went to the office of Gregory Wenndt, vice president of Tate & Lyle's industrial starch division, and resigned. Craig stated he was going to work at ADM to head up the technical service group. He also stated ADM had paid him a significant bonus.

¶ 11 After Craig resigned, Cody Wilson, Tate & Lyle's global security and facilities analyst, examined records from the printer Craig used. On the morning of August 2, 2016, Craig had printed several documents, which included a document titled "General Process and

Marketing Questions” and the technical projects spreadsheet. Wilson also examined Craig’s laptop and found he had copied a number of files to or from the laptop on July 27, 2016, within a short period of time. Wilson also determined Craig had e-mailed various documents from his work account to his personal account.

¶ 12 Pete Castelli, a senior vice president at Tate & Lyle, stated he contacted the legal department at ADM to advise it that Tate & Lyle believed Craig had misappropriated trade secret material. While employees from Tate & Lyle have gone to work at ADM, and vice versa, Castelli said Craig’s departure was different because he took information prior to leaving. Castelli stated ADM did not and could not guarantee it would never use the information taken by Craig.

¶ 13 On September 2, 2016, Tate & Lyle filed a two-count complaint against Craig, alleging the theft of trade secrets and the violation or threatened violation of the nondisclosure provisions of the employee agreement. In count I, Tate & Lyle set forth a claim under the Illinois Trade Secrets Act (Act) (765 ILCS 1065/1 to 9 (West 2014)), alleging Craig deliberately took secret and protected documents from Tate & Lyle prior to his resignation. 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.

¶ 14 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.

¶ 15 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.

¶ 16 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 impacted ADM and the TRO interfered with the employment relationship and rights of ADM. ADM claimed it was an indispensable party and was 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.

¶ 17 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 should not interfere with the control of the litigation. The court also denied ADM's motion to vacate the TRO.

¶ 18 On September 12, 2016, ADM filed a petition for review of the denial of the motion to vacate the TRO in this court pursuant to Illinois Supreme Court Rule 307(d) (eff. Jan. 1, 2016). This court affirmed the trial court's entry of the TRO. *Tate & Lyle Ingredients Americas LLC v. Craig*, 2016 IL App (4th) 160645-U.

¶ 19 In October 2016, the trial court conducted a hearing on the preliminary injunction. Iwanski testified regarding the significant event report he saw on Craig's desk. Iwanski stated

the report pertains to Ethylex, a type of starch and “a very large product within the paper industry.” The particular process and method of manufacture of Ethylex is a trade secret of Tate & Lyle.

¶ 20 Iwanski stated the formula found on Craig’s desk showed how to manufacture a particular Tate & Lyle product, as well as what ingredients go into it and in what amounts.

Wennedt stated the formula was for one of Tate & Lyle’s products that goes to “key customers.”

¶ 21 Meggan Hostetler-Schrock, the technical service manager for Tate & Lyle’s industrial starches group, testified a chemical engineer with the benefit of Ethylex’s patent but without the significant event report could not recreate the first step of Tate & Lyle’s production process. If a competitor had both the report and the Ethylex formula, Hostetler-Schrock stated “it would be scary” because Tate & Lyle keeps them confidential, as it does not want the competition to know how it makes products. Wennedt stated a competitor with this information would have a competitive advantage because it would allow the determination of Tate & Lyle’s manufacturing costs.

¶ 22 Hostetler-Schrock stated the technical projects spreadsheet reflected Tate & Lyle’s active projects and trade secret information about clients, including volumes, margin dollars, and key customers. Castelli stated the spreadsheet contained information on volume, pricing, and anticipated business with customers and is “highly proprietary and confidential” to Tate & Lyle’s business. He also agreed it would give a competitive advantage to whomever had it. Iwanski stated the spreadsheet was considered a trade secret, and it would give “a significant competitive advantage” to a competitor because “the specific volume and margin dollars we are targeting is on this document.”

¶ 23 Kris DiTommaso, ADM’s vice president of sweeteners and starches, stated he

met with Craig on August 8, 2016, to go through “ADM’s policies and ensuring that he understood that ADM had the policy of not using confidential information learned in an inappropriate way from competitors.” ADM also advised Craig to return any confidential information or documents to Tate & Lyle. On August 16, 2016, Craig returned a box to Tate & Lyle that included a thumb drive with some proprietary information and a picture of a “process diagram” related to the Ethylex process. Craig did not return the thumb drive photographed by Iwanski because Craig destroyed it. He also did not have the significant event report or the formula because he threw them away before leaving Tate & Lyle.

¶ 24 After hearing closing arguments, the trial court issued its oral ruling. The court found the information possessed by Craig and removed from Tate & Lyle constituted trade secret information and there was “a risk of inevitable disclosure.” The court found a clearly ascertainable right, a likelihood of success on the merits, that Tate & Lyle will suffer irreparable harm, and there exists no adequate remedy at law. Thus, the court issued the preliminary injunction.

¶ 25 In November 2016, the trial court issued its written order. The order prohibited Craig from disclosing or threatening to disclose Tate & Lyle’s trade secrets and working at ADM or any other competitor of Tate & Lyle in any department involving research and development, marketing, and/or production of industrial starch. The court also ordered Tate & Lyle to post a bond of \$250,000. Craig and ADM have appealed the court’s ruling pursuant to Illinois Supreme Court Rule 307(a) (eff. Jan. 1, 2016).

¶ 26 II. ANALYSIS

¶ 27 On appeal, Craig and ADM argue the trial court erred in granting the preliminary injunction. We disagree.

¶ 28 “The grant of a preliminary injunction is an extraordinary remedy, and courts do not favor their issuance.” *Ford Motor Credit Co. v. Cornfield*, 395 Ill. App. 3d 896, 903, 918 N.E.2d 1140, 1147 (2009). A preliminary injunction is intended to preserve the status quo between the parties pending a decision on the merits. *People ex rel. Klaeren v. Village of Lisle*, 202 Ill. 2d 164, 177, 781 N.E.2d 223, 230 (2002). “Trial courts have substantial discretion in deciding whether to grant a preliminary injunction \*\*\*, and the decision of the trial court will not be disturbed on appeal absent an abuse of discretion.” *Lifetec, Inc. v. Edwards*, 377 Ill. App. 3d 260, 268, 880 N.E.2d 188, 195 (2007).

¶ 29 To be entitled to a preliminary injunction, a plaintiff must show (1) a clearly ascertainable right in need of protection; (2) irreparable harm would result without the protection of the injunction; (3) no adequate remedy at law for the injury; and (4) a substantial likelihood of success on the merits in the underlying case. *Rochester Buckhart Action Group v. Young*, 379 Ill. App. 3d 1030, 1033-34, 887 N.E.2d 49, 52-53 (2008). Generally, “a preliminary injunction requires a showing by a preponderance of the evidence.” *Lifetec, Inc.*, 377 Ill. App. 3d at 268, 880 N.E.2d at 195.

“On appeal from an order granting or denying a preliminary injunction, controverted facts or the merits of the case are not decided. [Citation.] The only question is whether there was a sufficient showing made to the circuit court to sustain its order. [Citation.] The appeal may not be used to determine the merits of the case. [Citation.] This is because the purpose of the preliminary injunction is not to determine the controverted rights or decide the merits of the case, but rather, its function is to



preserve the rights of the parties or the state of affairs legally existing just prior to the motion for a preliminary injunction until the case can be decided on the merits. [Citation.] Thus, the plaintiff need not carry the same burden of proof that is required to support the ultimate issue. [Citation.] The proof required for issuance of a preliminary injunction requires a plaintiff to show that a ‘fair question’ exists regarding the claimed right, and that the court should preserve the status quo until the case can be decided on the merits.” *Scheffel Financial Services, Inc. v. Heil*, 2014 IL App (5th) 130600, ¶ 9, 16 N.E.3d 385.

¶ 30 “Under Illinois law, an employer’s trade secrets are a protectable interest.” *Stenstrom Petroleum Services Group, Inc. v. Mesch*, 375 Ill. App. 3d 1077, 1090, 874 N.E.2d 959, 971 (2007). Section 2(d) of the Act (765 ILCS 1065/2(d) (West 2014)) defines a trade secret as:

“[I]nformation, including but not limited to, technical or non-technical data, a formula, pattern, compilation, program, device, method, technique, drawing, process, financial data, or list of actual or potential customers or suppliers, that:

(1) is sufficiently secret to derive economic value, actual or potential, from not being generally known to other persons who can obtain economic value from its disclosure or use; and

(2) is the subject of efforts that are

reasonable under the circumstances to maintain its  
secrecy or confidentiality.”

See also *Liebert Corp. v. Mazur*, 357 Ill. App. 3d 265, 276, 827 N.E.2d 909, 921 (2005) (stating the plaintiffs can demonstrate information is a trade secret by showing (1) “the information was sufficiently secret to give them a competitive advantage” and (2) “they took affirmative measures to prevent others from acquiring or using the information”).

¶ 31 In addition, courts consider six common-law factors when determining whether a trade secret exists, including:

“(1) the extent to which the information is known outside the plaintiff’s business; (2) the extent to which it is known by employees and others involved in the plaintiff’s business; (3) the extent of measures taken by the plaintiff to guard the secrecy of the information; (4) the value of the information to the plaintiff and to the plaintiff’s competitors; (5) the amount of effort or money expended by the plaintiff in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.” *Stenstrom Petroleum*, 375 Ill. App. 3d at 1090, 874 N.E.2d at 972; see also Restatement (First) of Torts § 757, Comment b, at 6 (1939).

¶ 32 In the case *sub judice*, Tate & Lyle has presented a fair question that the materials downloaded or printed by Craig constituted trade secrets in need of protection. Iwanski testified the significant event report contained the manufacturing process of Ethylex, “one of the key products” to Tate & Lyle’s customers. He stated the process is a trade secret of Tate & Lyle.

¶ 33 Iwanski stated the formulas found on Craig’s desk showed how to manufacture a particular Tate & Lyle product, as well as what ingredients go into it and in what amounts.

Wennedt stated the formula was for one of its products that goes to “key customers.” Hostetler-Schrock testified the thought of a competitor with the significant event report and the formula “would be scary” because Tate & Lyle keeps them confidential.

¶ 34 Hostetler-Schrock testified the technical projects spreadsheet reflected Tate & Lyle’s active projects and trade secret information about clients, including volumes, margin dollars, and key customers. Castelli stated the spreadsheet is “highly proprietary and confidential” to Tate & Lyle’s business, and it would give a competitive advantage to whomever had it. Iwanski also stated the spreadsheet is considered a trade secret. Craig and ADM agree the spreadsheet is “competitively sensitive.”

¶ 35 The testimony at the hearing also established Tate & Lyle undertook efforts to maintain the secrecy of the documents. Wilson testified Craig’s laptop was secured by three passwords. The formula is marked “Confidential” and “Do Not Copy.” Craig also signed an employee agreement in which he agreed not to disclose any confidential, proprietary, or trade secret information of Tate & Lyle. Based on the information at issue and the steps taken by Tate & Lyle to prevent competitors from acquiring the information, we find the trial court did not abuse its discretion in concluding a fair question exists that the suspect material constituted trade secrets in need of protection.

¶ 36 After concluding the information in question was a clear interest in need of protection, the trial court considered this case as one of inevitable disclosure. Section 3(a) of the Act provides that “[a]ctual or threatened misappropriation may be enjoined.” 765 ILCS 1065/3(a) (West 2014). “Using a theory of inevitable disclosure, ‘a plaintiff may prove a claim

of trade secret misappropriation by demonstrating that defendant's new employment will inevitably lead him to rely on the plaintiff's trade secrets.' ” *Stenstrom Petroleum*, 375 Ill. App. 3d at 1096, 874 N.E.2d at 976 (quoting *PepsiCo., Inc. v. Redmond*, 54 F.3d 1262, 1269 (7th Cir. 1995)); see also *Liebert Corp.*, 357 Ill. App. 3d at 284, 827 N.E.2d at 927 (stating Illinois “courts may also grant injunctive relief to prevent the inevitable use or disclosure of misappropriated trade secrets”); *Strata Marketing, Inc. v. Murphy*, 317 Ill. App. 3d 1054, 1070, 740 N.E.2d 1166, 1178 (2000) (stating “inevitable disclosure is a theory upon which a plaintiff in Illinois can proceed under the Act”).

¶ 37 A plaintiff's chances of success under the inevitable disclosure theory will be enhanced “[i]f a former employee fulfills a substantially similar position with the plaintiff's competitor.” *Liebert Corp.*, 357 Ill. App. 3d at 284, 827 N.E.2d at 927. “The fact that a former employee accepted a similar position with a competitor, without more, will not demonstrate inevitable disclosure.” *Stenstrom Petroleum*, 375 Ill. App. 3d at 1096, 874 N.E.2d at 976. “Courts will also consider the level of competition between the parties, and the new employer's actions to prevent unlawful disclosure of trade secrets.” *Liebert Corp.*, 357 Ill. App. 3d at 284, 827 N.E.2d at 927-28.

¶ 38 A fair question exists that Craig's suspected misappropriation of trade secrets will lead to the inevitable disclosure of the information in his new employment at ADM. Both Tate & Lyle and ADM compete to sell industrial starch to paper manufacturers. Moreover, Wenndt testified Craig informed him his new job at ADM would require him to build up a similar type of technical service as at Tate & Lyle. Craig testified he told Wenndt ADM was not “getting much” out of its technical service group and he was going to try to have a system more like Tate & Lyle's.

¶ 39 Along with the competitive stature between Tate & Lyle and ADM, as well as the position Craig accepted at ADM, Craig's actions presented circumstantial evidence of misappropriation that could harm Tate & Lyle. In trade secret cases, plaintiffs must often " 'construct a web of perhaps ambiguous circumstantial evidence from which the trier of fact may draw inferences which convince him that it is more probable than not that what plaintiffs allege happened did in fact take place.' " *SI Handling Systems, Inc. v. Heisley*, 753 F.2d 1244, 1261 (3rd Cir. 1985) (quoting *Greenberg v. Croydon Plastics Co.*, 378 F. Supp. 806, 814 (E.D. Pa. 1974)).

¶ 40 Here, the evidence indicated Craig e-mailed documents from his work e-mail to his personal e-mail, downloaded various materials from his work computer to a thumb drive, which he did not return to Tate & Lyle, and printed the spreadsheet from his computer minutes before resigning. See *Liebert Corp.*, 357 Ill. App. 3d at 282, 827 N.E.2d at 926 (stating the facts suggested improper acquisition of trade secrets based on the defendant's attempt to destroy any indication of his downloading activities when the plaintiffs filed suit); *LeJeune v. Coin Acceptors, Inc.*, 381 Md. 288, 313-15, 849 A.2d 451, 466-67 (Md. 2004) (finding misappropriation by improper means where the employee copied his employer's computer files to a storage device for personal use before he resigned). Because the thumb drive was photographed on July 27, 2016, Craig's last day of work, and at a time he knew he would be leaving Tate & Lyle to join ADM, it can be presumed he was copying materials in anticipation of starting his employment at ADM. Although ADM has stated it has sought to prevent any harm to Tate & Lyle and Craig has argued he cannot disclose information he no longer has, the evidence presented at the preliminary injunction stage supports the trial court's finding of inevitable disclosure and the need to preserve the status quo until the case can be decided on the

merits. We find the court did not abuse its discretion in granting the preliminary injunction.

¶ 41 In the alternative, Craig and ADM argue the trial court's injunction is overbroad. The trial court preliminarily enjoined Craig from threatening to disclose or actually disclosing Tate & Lyle's trade secrets to any party, including but not limited to ADM. The court also preliminarily enjoined Craig from working at ADM or a Tate & Lyle competitor "in any department which involves research and development, marketing, and/or production of industrial starch."

¶ 42 Craig and ADM claim the preliminary injunction prevents Craig from working at any Tate & Lyle competitor in a capacity that involves industrial starch for as long as the litigation continues. They also argue the injunction should be narrowed to require destruction of any relevant documents presently in Craig's possession, if any, and to prohibit him from referring to, using, or disclosing the alleged trade secrets at issue, without barring him from working in industrial starch at ADM.

¶ 43 "Injunctive relief must be fashioned in such a way that it will protect the legitimate interests of the plaintiff without unduly burdening the ability of the defendant to exercise [his] rights." *In re Marriage of Gary*, 384 Ill. App. 3d 979, 987, 894 N.E.2d 809, 816 (2008); see also *Robrock v. County of Piatt*, 2012 IL App (4th) 110590, ¶ 66, 967 N.E.2d 822 (stating "[a]n injunction should be reasonable and should only be as broad as is essential to safeguard the rights of the plaintiff" [citation]).

"There are conflicting social and economic policy considerations in every trade secret case. [Citation.] On one hand, a business that has expended substantial amounts of money and time to develop secret advantages over its competitors must be protected against

the misappropriation of that information by a prior employee, who was in a position of confidence and trust. On the other hand, it is a fundamental right of an individual to pursue the particular occupation for which he or she is best trained. [Citation.]

Injunctive relief should not go beyond the need to protect the legitimate interests of the plaintiff and should not unduly burden the defendant.” *Stampede Tool Warehouse, Inc. v. May*, 272 Ill. App. 3d 580, 590-91, 651 N.E.2d 209, 217 (1995).

¶ 44 Here, the evidence indicated the spreadsheet contained proprietary customer information as well as current projects. Hostetler-Schrock stated the spreadsheet contained information on volumes and margin dollars. Castelli stated it would give a competitive advantage to whomever had it. Wenndt testified the “half life” of a strategic plan regarding margins and prices “can be anywhere from two years to five years.” Iwanski also stated the significant event report “would take a significant amount of resources” to produce.

¶ 45 We find the preliminary injunction is not too broad in scope or time. The trial court considered the impact of enjoining Craig in his line of work. However, it concluded Craig’s testimony was not credible with respect to downloading files onto thumb drives, which makes it difficult to fashion a remedy that relies on his credibility in refraining to divulge Tate & Lyle’s trade secrets with or without ADM’s knowledge. The court also found Tate & Lyle would suffer irreparable harm, “due in large part to the information that was in the documents” that took years to create. As this is a preliminary injunction, the court stated it shall remain in effect pending a trial on the merits unless sooner modified or dissolved by the court. We find the injunctive relief does not go beyond the need to protect Tate & Lyle’s legitimate interests and

does not unduly burden Craig.

¶ 46

### III. CONCLUSION

¶ 47 For the reasons stated, we affirm the trial court's judgment.

¶ 48 Affirmed.

¶ 49 JUSTICE APPLETON, dissenting:

¶ 50 To my mind, the passage of time, given the fast pace of innovation in the industry, renders the injunctive relief unnecessary. While it is undisputed that defendant secreted Tate & Lyle's intellectual property, as of this date, it is stale. While I agree that defendant may have stolen secrets from plaintiff, I cannot agree that plaintiff suffered any long-term damage.