Illinois Official Reports

Appellate Court

***Archer Daniels Midland Co. v. Sinele*, 2019 IL App (4th) 180714**

Appellate Court Caption	ARCHER DANIELS MIDLAND COMPANY, Plaintiff-Appellee, v. LANE D. SINELE and LS AG LINK, LLC, Defendants-Appellants.
District & No.	Fourth District Docket No. 4-18-0714
Filed	February 1, 2019
Decision Under Review	Appeal from the Circuit Court of Macon County, No. 18-CH-180; the Hon. Thomas E. Little, Judge, presiding.
Judgment	Reversed and remanded.
Counsel on Appeal	Curtis C. Calloway, David W. Gearhart, and Justin M. Ladendorf, of St. Louis, Missouri, for appellants. Jerrold H. Stocks, of Featherstun, Gaumer, Stocks, Flynn & Eck, LLP, of Decatur, for appellee.
Panel	JUSTICE CAVANAGH delivered the judgment of the court, with opinion. Justices Knecht and Turner concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff, Archer Daniels Midland Company (ADM), moved for a preliminary injunction against its former employee, Lane D. Sinele, on the theory that Sinele's new consulting business, LS Ag Link, LLC (LS Ag), inevitably would lead to his use of ADM's trade secrets. ADM invoked the doctrine of inevitable disclosure, which first was expressed in *PepsiCo, Inc. v. Redmond*, 54 F.3d 1262 (7th Cir. 1995), a federal case that the Appellate Court of Illinois has adopted (*Strata Marketing, Inc. v. Murphy*, 317 Ill. App. 3d 1054, 1070 (2000)). On the basis of that doctrine, the court granted ADM's motion. Defendants, Sinele and LS Ag, appeal. We conclude that ADM failed to show a likelihood of success on the ultimate merits of this case. Therefore, we reverse the judgment and remand this case for further proceedings not inconsistent with this opinion.

¶ 2 I. BACKGROUND

¶ 3 A. ADM's Presence in the Corn Sweetener Industry

¶ 4 From corn, a variety of sweeteners can be made, including liquid dextrose, crystalline dextrose, high fructose corn syrup, crystalline fructose corn syrups, maltodextrin, and dry sucrose. In the United States, five corn refiners are in the business of making such sweeteners: ADM, Cargill, Tate & Lyle, Ingredion, and Roquette.

¶ 5 The sweeteners division is one of the larger groups of ADM. In its most recent fiscal year, ADM realized a profit of $600 million from its sweetener and starch group, and only a small percentage of that profit came from starch.

¶ 6 In the corn sweetener industry, customers who buy sweeteners are sometimes called "buyers." ADM has a few hundred buyers of sweeteners in the United States, including, for the past 10 or 12 years, Sensory Effects, Inc. (Sensory Effects), and PMP, Inc. (PMP). Whether Sensory Effects and PMP bought sweeteners *exclusively* from ADM during those 10 or 12 years is in dispute, but the parties appear to agree that from time to time for the past 10 to 12 years, those companies have bought sweeteners from ADM.

¶ 7 B. The Two Categories of Buyers

¶ 8 ADM categorizes its buyers of sweeteners as either toll contract buyers or flat rate buyers.

¶ 9 A toll contract buyer commits to buying from ADM a fixed quantity of sweetener during a year, with the understanding that the amount the buyer will pay may fluctuate with the price of corn. An advantage, though, of a toll contract is that it may be entered into at any time of the year.

¶ 10 A flat rate contract can be entered into only during ADM's annual contracting season, a period of 30 to 60 days, which, in the last few years, has begun in the late summer. Also, in a flat rate contract, the buyer agrees to pay a fixed price for a full year's supply of sweetener.

¶ 11 Thus, in a flat rate contract, ADM bears the risk of increases in the price of corn, whereas in a toll contract, the buyer bears that risk.

¶ 12 C. Sinele's Career at ADM

¶ 13 Sinele worked for ADM from January 1990 until his retirement from ADM on August 3, 2018. At the time of his retirement, he was the manager of national accounts for ADM's sweetener division. In that position, he had represented ADM by soliciting, procuring, and servicing buyers of sweeteners. Sensory Effects and PMP were two of the buyers that ADM assigned to him.

¶ 14 D. The Nondisclosure Agreements

¶ 15 During his employment at ADM, Sinele signed two nondisclosure agreements, one in December 1989 and the other, an identical one, in October 1991. In the nondisclosure agreements, Sinele, as the "Employee," made the following promise to ADM, the "Company":

> "The Employee *** agrees, except as required by Employee's duties while employed by the Company, not to use or disclose to any person, firm[,] or corporation, at any time, either during his/her employment with the Company or thereafter, any trade secret or confidential information of the Company, whatsoever, including, without limitation, information regarding any of the Company's customers, markets, future plans, the prices at which it obtains or has obtained its raw materials and other supplies, [or] the prices at which it sells or has sold its products ***.
>
> It is understood that the provisions set forth in this agreement shall remain in full force and effect during the entire period that Employee is employed by the Company ***."

¶ 16 Although he signed the nondisclosure agreements, Sinele never signed either a noncompetition agreement or a customer nonsolicitation agreement.

¶ 17 E. Sinele's Access to the Tableau Database While He Was Employed at ADM

¶ 18 While working for ADM, Sinele had access to ADM's Tableau database, which contained information about freight systems, manufacturing costs by facility, individual customers' procurements of corn, manufacturing costs of the corn products, customers' margins, and margins by location. ADM considered this information to be confidential. Information in Tableau could be accessed only by salespersons, such as Sinele, and then only for the customers for which the salesperson had responsibility.

¶ 19 There was no evidence that Sinele's use of the Tableau database spiked on the final day of his employment at ADM, August 3, 2018. He testified that on his final day, he used Tableau to transfer his accounts to the five ADM salespeople to whom his customers were being reassigned. Sinele's boss, Kris Lutt, testified that he would have expected Sinele to access the Tableau system to accomplish those transfers. Sinele denied printing, downloading, or memorizing any information from Tableau, and he testified that the information constantly was changing, anyway.

¶ 20 F. LS Ag

¶ 21 After leaving ADM, Sinele formed a consulting business, LS Ag, in which he planned to be an agent of buyers in their negotiations with the five manufacturers of sweeteners. He promoted himself as having a bird's-eye view of the industry from his 28 years of employment at ADM.

¶ 22 On September 11, 2018, on behalf of LS Ag, Sinele sent Lutt an e-mail. The e-mail had the subject line "PMP and Sensory Effects" and read as follows:

> "I have received offers for my clients from all manufacturers except ADM.
>
> Offers are attractive[,] and we will likely move on bookings soon.
>
> I would be happy to meet with you in Decatur to review opportunities."

¶ 23 G. ADM's Complaint for Injunctive Relief

¶ 24 On September 12, 2018, ADM filed a complaint for an injunction against defendants. The complaint had two counts. Count I invoked the Illinois Trade Secrets Act (Act) (765 ILCS 1065/1 *et seq.* (West 2016)), and count II invoked the nondisclosure agreements Sinele had signed at ADM.

¶ 25 ADM alleged that while Sinele was its employee, he had access to Tableau, the "ADM customer profitability tool, *** which calculate[d] ADM margins and operating profit of ADM for each customer"—information that ADM designated as "Trade Secrets." ADM claimed:

> "Sinele's knowledge of [these] Trade Secrets will enable customers and competitors to gain a negotiating advantage by exploiting information the competitor/customer would not possess in an arm's length negotiation. The unfair advantage could cause ADM to lose customers or impel ADM to discount pricing[,] causing economic injury.
>
> * * *
>
> *** The market for Sweetener's sales exists for a short period of time during the late summer/early fall each year[,] when customers will determine volume needs for the subsequent year and pricing for the subsequent year will be determined. Stated further, the Trade Secrets of ADM are most valuable to competitors/customers and present the greatest risk of harm to ADM during the Annual Contracting Season. The impact of an exploitation of an ADM Trade Secret during the Annual Contracting Season is for a period of not less than twelve (12) months ***.
>
> *** The Annual Contracting Season is in progress as of date of filing of this Verified Complaint."

¶ 26 The complaint requested a temporary, preliminary, and permanent injunction prohibiting defendants "from threatening to disclose or actually disclosing Trade Secrets of ADM to any party or otherwise using said information in any respect in any business activity undertaken by [defendants]." The complaint also requested the circuit court to enjoin defendants "from any business activity engaged in sales/purchases in the Sweeteners' market on his/its behalf, on behalf of any ADM current or potential customer or any competitor to ADM during the 2018 annual contracting season through and including August 31, 2019."

¶ 27 H. The Preliminary Injunction

¶ 28 On October 1, 2018, after hearing evidence, the trial court entered the following preliminary injunction:

> "1. Defendants are preliminarily enjoined from transacting any business activity involving sale/purchase in the Sweeteners market involving any ADM Buyer/customer serviced by Sinele at any time within the last two (2) years of his employment with ADM;

> 2. Defendants are preliminarily enjoined from disclosing or threatening to disclose trade secrets of ADM to any third party, or otherwise using said information in any respect in any business activity undertaken by Defendants."

¶ 29 This appeal followed.

¶ 30 II. ANALYSIS

¶ 31 Sinele maintains that the trial court abused its discretion by issuing the preliminary injunction. "The decision to grant or deny a preliminary injunction rests within the sound discretion of the trial court, and a reviewing court will not disturb the decision absent a clear abuse of that discretion." *Desnick v. Department of Professional Regulation*, 171 Ill. 2d 510, 516 (1996). The question for us, then, is whether the preliminary injunction is reasonably defensible under the facts and the law. See *Jackson v. Bailey*, 384 Ill. App. 3d 546, 548-49 (2008) ("We may find an abuse of discretion only where no reasonable person would take the position adopted by the trial court ***.").

¶ 32 To be entitled to a preliminary injunction, the moving party must establish four propositions, which to some extent overlap with one another. First, the moving party has "a clearly ascertained right in need of protection." *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 62 (2006). Second, the moving party will suffer an "irreparable injury in the absence of an injunction." *Id.* Third, the moving party has "no adequate remedy at law." *Id.* Fourth, the moving party is likely to succeed on the ultimate merits of the case. *Id.*

¶ 33 ADM believes that Sinele's new profession necessarily would entail misappropriating ADM's trade secrets and that, hence, ADM is likely to succeed on the ultimate merits of this case. ADM does not claim that Sinele, as of yet, *has disclosed* any of ADM's trade secrets (ADM has no evidence that he has done so), but ADM claims that Sinele's present business, LS Ag, would lead *inevitably* to his *use* of ADM's trade secrets. Under the Act, "[a]ctual or *threatened* misappropriation may be enjoined" (emphasis added) (765 ILCS 1065/3(a) (West 2016)), and " '[m]isappropriation' " includes not only the "disclosure" but the "use of a trade secret" (*id.* § 2(b)(2)). Thus, the Act authorizes a court to enjoin the threatened use of a trade secret, regardless of whether the defendant ever would disclose the trade secret to anyone.

¶ 34 From Sinele's consulting business, ADM perceives the following threatened use of its trade secrets. (We quote from ADM's brief.) Because "ADM gave Sinele access to the confidential data and information regarding ADM's cost, terms, margins, efficiencies, customer ranking, etc.," Sinele is "in a unique position to know ADM's negotiating tolerances relative to delivered price, terms[,] or any other variable in the competitive negotiation between seller and buyer." Sinele could "tell [an] existing ADM customer to hold out in the negotiations with ADM because ADM has a greater tolerance in its margins and [could] offer Sinele's client a better price or better terms."

¶ 35 Assuming that Sinele has a detailed memory of the various costs listed in Tableau, all that information would do is represent a floor below which it would be impossible for ADM to go without losing money—and even that floor is in flux because as Sinele testified, apparently without being contradicted, the costs change and Tableau is updated accordingly.

¶ 36 Besides, even if Sinele knew that ADM had costs totaling, let us say, $100 and a profit margin of $25 above those costs, that knowledge, in and of itself, would not enable Sinele to predict how much less of a profit margin that ADM would be willing to accept. Granted, he would know that ADM needed to charge at least $100 to avoid losing money in the transaction, but it would not follow that ADM had a "negotiating tolerance" of a full $25. Corporations are not in business to break even; they are in business to maximize profits, which means charging whatever customers will pay, given the competition. How great a reduction in its profit margin ADM feels the necessity of tolerating in any particular negotiation will be up to management in its assessment of the competition. Of course, management, in making that decision, may well take into account the information in Tableau, but it will be management's decision, not (it appears) a predetermined result in Tableau. Sinele's attorney asked Lutt:

> "Q. *** Who ultimately approves at ADM whether a sale goes through?
>
> A. So[,] the sale ultimately is approved by either myself or someone in the product management group.
>
> Q. Who else in that product management has that approval power?
>
> A. So[,] we have product managers that approve their respective products.
>
> Q. But ultimately, you could also approve a sale; right?
>
> A. Well, certainly, I could approve a sale or someone above me, yes.
>
> Q. And you could reject any sale there is; right?
>
> A. Yes. That's correct."

¶ 37 Thus, the theoretical selling price below which ADM would be unwilling to descend will not be in the Tableau database; rather, it will be in the judgment of the product manager, Lutt, or someone superior to Lutt. ADM will be perfectly free to reject any offer that Sinele makes on behalf of buyers, and Sinele will be perfectly capable of asking ADM to agree to a lower selling price regardless of what he remembers or does not remember from Tableau. He will be able to do his work as a broker without using ADM's trade secrets; his use of ADM's trade secrets will not be inevitable.

¶ 38 If, instead of becoming a broker for buyers, Sinele had accepted a job in the sweetener division of one of ADM's competitors—say, Cargill—this case might have been more comparable to *PepsiCo*.

¶ 39 In *PepsiCo*, PepsiCo, Inc. (PepsiCo), and Quaker Oats Company (Quaker) were fierce competitors with one another in the sub-industry of sports drinks and new age drinks. *PepsiCo*, 54 F.3d at 1263-64. William Redmond Jr. was the general manager of PepsiCo's business unit covering all of California, and in that high-level position, he had access to PepsiCo's trade secrets (*id.* at 1264), including its strategic plan and annual operating plan (*id.* at 1265).

¶ 40 Quaker enticed Redmond to quit his job at PepsiCo and to accept a job at Quaker as vice president of field operations for Gatorade, a sports drink that PepsiCo had been struggling to rival with its own sports drink, All Sport. *Id.* at 1264. PepsiCo responded by seeking a preliminary injunction barring Redmond from (1) disclosing any of PepsiCo's trade secrets to Quaker and (2) assuming any duties, in his new job at Quaker, relating to the pricing, marketing, or distribution of beverages. *Id.* at 1263.

¶ 41 After hearing evidence on PepsiCo's motion for a preliminary injunction, the district court concluded that "unless Redmond possessed an uncanny ability to compartmentalize information, he would necessarily be making decisions about Gatorade and Snapple" (Quaker's new age drink) "by relying on his knowledge of [PepsiCo's] trade secrets." *Id.* at 1269. For example, the annual operating plan included sensitive information about " 'pricing architecture'—how [PepsiCo] price[d] its products in the marketplace"—and knowing

PepsiCo's pricing architecture would have enabled a competitor, such as Quaker, "to anticipate [PepsiCo's] pricing moves and underbid [PepsiCo] strategically whenever and wherever the competitor so desired." *Id.* at 1265. Redmond also "had intimate knowledge of [PepsiCo's] 'attack plans' for specific markets." *Id.* In his new job at Quaker, Redmond "would have substantial input as to Gatorade and Snapple pricing, costs, margins, distribution systems, products, packaging[,] and marketing." *Id.* at 1266. PepsiCo was concerned that, armed with Redmond's knowledge of PepsiCo's strategic plan and annual operating plan, Quaker would be able to "respond strategically" by "anticipat[ing]" PepsiCo's "moves." *Id.* at 1270.

¶ 42 The district court found PepsiCo's concerns to be justified and granted its motion for a preliminary injunction. *Id.* at 1263. Redmond and Quaker appealed.

¶ 43 In its decision on appeal, the Seventh Circuit observed that "[t]he question of threatened or inevitable misappropriation in [that] case" laid bare "a basic tension in trade secret law." *Id.* at 1268. On the one hand, there were "standards of commercial morality." (Internal quotation marks omitted.) *Id.* On the other hand, there were the values of healthy competition and workers' freedom to pursue their livelihoods after leaving their current positions—a freedom that, in many cases, workers had never agreed to give up. *Id.* ("[T]rade secret law does not provide a reserve clause for solicitous employers."). This tension was "particularly exacerbated when a plaintiff sue[d] to prevent not the actual misappropriation of trade secrets but the mere threat that [such misappropriation would] occur." *Id.*

¶ 44 The Seventh Circuit approved of a previous district court case holding that if all the plaintiff alleged was that the defendants " 'could misuse [the] plaintiff's secrets,' " and that the plaintiff " 'fear[ed] they [would],' " that was " 'not enough' " to support a preliminary injunction. *Id.* at 1268-69 (quoting *Teradyne, Inc. v. Clear Communications Corp.*, 707 F. Supp. 353, 357 (N.D. Ill. 1989)). The threatened misappropriation had to be inevitable:

> "[A] plaintiff may prove a claim of trade secret misappropriation by demonstrating that [the] defendant's new employment will inevitably lead him to rely on the plaintiff's trade secrets. *** [T]he allegation is based on the fact that the disclosure of trade secrets in the new employment is inevitable, whether or not the former employee acts consciously or unconsciously." (Internal quotation marks omitted.) *Id.* at 1269.

¶ 45 In upholding the preliminary injunction in *PepsiCo*, the Seventh Circuit agreed with the district court that PepsiCo most likely would be able to prove the inevitability of Redmond's use of its trade secrets in his new position at Quaker:

> "[W]hen we couple the demonstrated inevitability that Redmond would rely on [PepsiCo's] trade secrets in his new job at Quaker with the district court's reluctance to believe that Redmond would refrain from disclosing these secrets in his new position (or that Quaker would ensure Redmond did not disclose them), we conclude that the district court correctly decided that PepsiCo demonstrated a likelihood of success on its statutory claim of trade secret misappropriation." *Id.* at 1271.

The strength of PepsiCo's case lay in the unfairness of Redmond's (inevitably) using PepsiCo's trade secrets to help a direct competitor. The Seventh Circuit remarked: "PepsiCo finds itself in the position of a coach, one of whose players has left, playbook in hand, to join the opposing team before the big game." *Id.* at 1270.

¶ 46 Sinele argues, convincingly, that *PepsiCo* is distinguishable and that the inevitable disclosure doctrine is inapplicable because unlike Redmond in *PepsiCo*, he has not "join[ed] the opposing team." *Id.* After resigning from ADM, Sinele did not join forces with some other *seller* of sweeteners; he did not become an agent or employee of any of ADM's competitors in the sweetener business. *Cf. id.* at 1263-64 ("The facts of this case lay against a backdrop of fierce beverage-industry competition between Quaker and PepsiCo ***."). Instead, Sinele now represents *buyers* of sweeteners, which, far from being competitors of ADM, are its customers or potential customers. See 12 C.J.S. *Brokers* § 82 (2015) ("[T]he broker is ordinarily the agent of the person who pays him or her.").

¶ 47 We agree with Sinele that it is possible for him to represent buyers in negotiations for the purchase of sweeteners and to fully perform his duties as their broker, without disclosing or using any confidential information he might remember from ADM's Tableau database. He can gather competing bids from manufacturers of sweeteners without using any remembered data from Tableau. The only thing that ultimately will matter in such negotiations is which manufacturer offers the best deal for the customer—not what ADM's Tableau database says.

¶ 48 ADM is concerned that Sinele will assume "the role of negotiating against ADM with full knowledge of the ADM playbook." But ADM is transplanting the Seventh Circuit's sports metaphor into a radically different context. The "playbook" that Redmond had was PepsiCo's strategic plan and annual operating plan. His new job at Quaker was to preserve and increase Quaker's market share in sport and new age drinks. To that end, it was inevitable that, consciously or unconsciously, he would rely on his knowledge of PepsiCo's "playbook" to underbid PepsiCo and anticipate its marketing moves. Sinele's clients, buyers of sweeteners, have no comparable designs on ADM; economically, they are the sustainers of ADM, not its "fierce *** competit[ors]." *PepsiCo*, 54 F.3d at 1263-64. Lutt testified:

> "A. We could benefit from a sale with LS Ag Link, and we could be harmed by a sale with LS Ag Link.
>
> Q. That's a good point. Who ultimately approves at ADM whether a sale goes through?
>
> A. So[,] the sale is ultimately approved by either myself or someone in the product management group."

¶ 49 So, there is a significant difference between Redmond in *PepsiCo* and Sinele in the present case. Sinele represents ADM's potential enrichers, the buyers that keep ADM afloat, not any of its competitors. Redmond, by contrast, would have unfairly used PepsiCo's trade secrets to help PepsiCo's direct competitor, Quaker, in its struggle against PepsiCo for dominance in the market. There appears to be no evidence that Sinele will do anything comparable. In his new occupation as a broker for buyers, he merely aims to facilitate "fair and vigorous business competition" among all manufacturers of sweeteners. (Internal quotation marks omitted.) *Colson Co. v. Wittel*, 210 Ill. App. 3d 1030, 1039 (1991). PepsiCo could not help but suffer harm from Redmond's knowledge of its trade secrets. ADM, by contrast, remains perfectly free to reject any detrimentally low offer that Sinele makes. A mutually acceptable deal is what the negotiations will strive for. And as long as ADM offers the customer the best deal compared to the other deals on offer, the customer, as a fellow practicer of capitalism, will little care what ADM's profit margin is.

¶ 50 Undeniably, the knowledge and experience Sinele has accumulated while working as a salesman in ADM's sweetener division will help him in his negotiations with manufacturers, including ADM—indeed, that is his selling point to buyers of sweeteners. But "[t]hose are things an employee is free to take and to use in later pursuits, especially if they do not take the form of written records, compilations[,] or analyses." (Internal quotation marks omitted.) *Id.* "[I]t is recognized that an employee may derive some benefit from his access to the collective experience of his employer's business." *Service Centers of Chicago, Inc. v. Minogue*, 180 Ill. App. 3d 447, 454-55 (1989). Section 396(b) of the Restatement (Second) of Agency (Restatement (Second) of Agency § 396(b) (1958)) "permits an agent, upon termination of an agency, absent a contrary agreement, to use secret information concerning customers properly acquired from the principal and committed to memory." *Colson*, 210 Ill. App. 3d at 1038.

¶ 51 ADM does not allege that, when leaving ADM, Sinele took with him anything other than his unaided memory. ADM does not allege that he took with him a copy of the Tableau database. Instead, ADM is concerned that Sinele might remember its profit margins for each customer that had been assigned to him and that these profit margins might suggest to him that there is room for ADM to come down in its selling price when he represents these customers in negotiations with ADM (even though it will be entirely up to ADM whether to come down). However, in a case that ADM cites in its brief, the appellate court pointedly wrote: "The mere knowledge of the profit desired by an employer does not constitute a trade secret." *Stenstrom Petroleum Services Group, Inc. v. Mesch*, 375 Ill. App. 3d 1077, 1093 (2007).

¶ 52 The identity of buyers—which companies buy sweeteners—is not a trade secret, either, if their identity can be ascertained from public sources of information. See *System Development Services, Inc. v. Haarmann*, 389 Ill. App. 3d 561, 574-75 (2009); *Carbonic Fire Extinguishers, Inc. v. Heath*, 190 Ill. App. 3d 948, 953 (1989). Sinele testified that although he considered the identity of ADM's customers to be a secret, one could readily discover which companies used sweeteners by reading the labels on food containers:

> "A. Yeah. You can go through any grocery store and identify—Kris Lutt said it earlier, that there's a lot of food items that have sweeteners in them. When I was early on in my career, that was one of the things we did. We read labels and then identified who manufactured that label. And then we would go and—it's a bit of a process, but you can Google anything these days. Back in those days, it was yellow pages. But it's a bit of a process, but you can find who that company is. You can call their front desk, and you can get hooked up to their purchasing department."

Thus, "[t]his information is easily obtained from telephone directories, chamber of commerce directories, the Internet, and a variety of other sources." *Haarmann*, 389 Ill. App. 3d at 575. If "customer information is readily available to competitors through normal competitive means, no protectable interest exists." (Internal quotation marks omitted.) *Id.* "A trade secret must be something kept from the general public and not susceptible to common knowledge." *Id.*

¶ 53 Even the desirability of one customer over another is not a trade secret, either, if their relative desirability depends on information that the customer itself could tell you, *e.g.*, how much sweetener they buy, how much they pay, and how promptly they pay. See *Carbonic Fire Extinguishers*, 190 Ill. App. 3d at 953-54 ("The pricing information here, unlike a unique formula used to calculate a price but unknown to a customer or competitors [citation], was available to the various customers to which it pertained. As such, those customers were at liberty to divulge such information to a competitor of plaintiff's, or to anyone for that matter.").

¶ 54 If ADM really feels vulnerable because of any memory Sinele might have of the profit margins ADM realized from the customers it assigned to him, ADM could have easily headed off this concern by including a provision in his employment contract that, after his employment with ADM ended, he would refrain from representing these customers in negotiations with ADM for the purchase of sweeteners. To paraphrase *Colson*:

> "To achieve the kind of protection being sought in this case, [ADM] should have required its prospective employees to sign restrictive covenants as part of their employment contracts. The prospective employees could then have bargained about the terms of the restrictive covenants or perhaps have extracted some additional contractual benefits in exchange for [ADM's] insistence on the covenants. At a minimum, employees, such as [Sinele], would then have had advance notice of the limitations upon their future employment as a result of the covenants to which they agreed. [ADM's] actions in the present case amount to an effort to derive the benefits of a restrictive covenant which it never obtained from [Sinele]." *Colson*, 210 Ill. App. 3d at 1040-41.

¶ 55 Because this litigation appears to be an attempt "to re-write the parties' employment agreement under the rubric of inevitable disclosure" (*EarthWeb, Inc. v. Schlack*, 71 F. Supp. 2d 299, 311 (S.D.N.Y. 1999)), ADM failed to show a likelihood of success on the merits (see *Mohanty*, 225 Ill. 2d at 62). Therefore, we find the preliminary injunction to be an abuse of discretion. See *Carbonic Fire Extinguishers*, 190 Ill. App. 3d at 954.

¶ 56 III. CONCLUSION

¶ 57 For the foregoing reasons, we reverse the judgment and remand this case for further proceedings not inconsistent with this opinion.

¶ 58 Reversed and remanded.