

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 20-3584, 21-1028, and 21-1029

MALLET AND COMPANY INC.

v.

ADA LACAYO; RUSSELL T. BUNDY ASSOCIATES,
INC. d/b/a Bundy Baking Solutions; SYNOVA LLC;
WILLIAM CHICK BOWERS

Russell T. Bundy Associates, Inc. d/b/a Bundy Baking
Solutions; Synova LLC,
Appellants in No. 20-3584

William Chick Bowers,
Appellant in No. 21-1028

Ada Lacayo,
Appellant in No. 21-1029

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. No. 2-19-cv-1409)
District Judge: Hon. Cathy Bissoon

Argued
April 16, 2021

Before: JORDAN, GREENAWAY, JR., and SCIRICA,
Circuit Judges.

(Filed: September 24, 2021)

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OPINION OF THE COURT

JORDAN, *Circuit Judge*.

Behind the breads, cakes, and other treats on our grocery store shelves, there is a ferociously competitive market for baking supplies, and that is the setting for this trade secret and unfair competition case.

In 2019, Mallet and Company Inc. (“Mallet”) learned that Russell T. Bundy Associates, Inc., doing business as Bundy Baking Solutions (“Bundy”), was becoming its newest competitor in the sale of baking release agents. Release agents are lubricants that allow baked goods to readily separate from the containers in which they are made. Bundy was already well-known for other products it offered to the commercial

baking industry when it decided to launch a new subsidiary, Synova LLC (“Synova”), to sell baking release agents. Synova hired two of Mallet’s employees, both of whom had substantial access to Mallet’s proprietary information. Taking some of that information with them from Mallet to Synova, they helped Synova rapidly develop, market, and sell release agents to Mallet’s customers. Mallet sued, saying such progress would have taken years to accomplish but for the misappropriation of its trade secrets. Agreeing with Mallet, the District Court issued the preliminary injunction now challenged on appeal, restraining Bundy, Synova, and those employees (collectively, “the Defendants”) from competing with Mallet.

While we appreciate the challenges inherent in disputes involving trade secrets and requests for preliminary relief, the injunction at issue is flawed and must be vacated. For the reasons that follow, we will remand for further consideration of what, if any, equitable relief is warranted and what sum Mallet should be required to post in a bond as “security ... proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c).

I. BACKGROUND

A. Factual Background

1. Mallet and the Defendant Employees

For over eighty years, Mallet has been in the business of developing, manufacturing, and selling baking release

agents as well as the equipment used to apply such agents.¹ Release agents are applied to commercial baking pans to ensure the consistent release of baked goods over hundreds of uses. They thus play a crucial role in large-scale baking operations. While the ingredients used to create them – mineral oils, vegetable oils, and lecithin – are commonly known, developing a successful release agent is not as simple as knowing a few of its components. There are “a wide range of factors that have to be considered when formulating a release agent,” including product performance, stability, application, cost, availability, and packaging. (J.A. at 10984-85 (Mallet² Depo.)) And the efficacy of a release agent can greatly depend on the customer’s product, pan condition, storage conditions, and machinery used to apply the agent. As a result, there are different kinds of release agents, each with unique properties that may be further tailored to maximize performance when used in the production of certain goods. Still, competitors in the release agent market often manufacture and sell identical or similar products.

Mallet proclaims itself “a service business delivering value through the combination of high quality, consistent products and the equipment to apply them.” (J.A. at 2232 (Mallet Website).) Prior to 2018, it manufactured about fifty

¹ Mallet was acquired in 2016 by Vantage Specialty Chemicals, Inc. and, though the record is not clear on this, now appears to be a subsidiary operating under Vantage’s food division.

² We refer to Mallet’s Federal Rule of Civil Procedure 30(b)(6) Deposition as “Mallet Depo.”

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