

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 19-1028 & 19-1107

SODEXOMAGIC, LLC

v.

DREXEL UNIVERSITY

SodexoMAGIC, LLC,
Appellant in No. 19-1028

Drexel University,
Appellant in No. 19-1107

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 2:16-cv-05144)
District Judge: Honorable Michael M. Baylson

Argued: March 16, 2020

Before: AMBRO, BIBAS, and PHIPPS, *Circuit Judges*.

(Filed: January 20, 2022)

Shay Dvoretzky [ARGUED]
Skadden Arps Slate Meagher & Flom
1440 New York Avenue, N.W.
Washington, DC 20005
Attorney for SodexoMAGIC, LLC

Jared D. Bayer
Stephen A. Cozen [ARGUED]
Robert W. Hayes
Cozen O'Connor
1650 Mark Street
One Liberty Place, Suite 2800
Philadelphia, PA 19103
Attorneys for Drexel University

OPINION OF THE COURT

PHIPPS, *Circuit Judge.*

TABLE OF CONTENTS

I.	Introduction.....	5
II.	Factual Background	6
A.	The Competition to Provide Food Services at Drexel University.....	6
B.	Negotiation of the Management Agreement.....	8
C.	The Short Unhappy Life of the Management Agreement.....	9
III.	Procedural History and Jurisdictional Analysis.....	12

A.	The Parties’ Claims and Counterclaims	12
B.	The District Court’s Jurisdiction over the Dispute	13
C.	The District Court’s Resolution of All Claims and Counterclaims	15
D.	Appellate Jurisdiction	16
IV.	Discussion	17
A.	The Parties’ Competing Fraudulent Inducement Claims Have Different Fates: SodexoMAGIC’s Claim Survives; Drexel’s Counterclaim Does Not.....	19
1.	Common-Law Fraud Claims in Pennsylvania	20
2.	SodexoMAGIC’s Fraudulent Inducement Claim for Compensatory Damages Survives Summary Judgment.....	23
a.	SodexoMAGIC Presents Sufficient Evidence of a Misrepresentation as Well as Concealment.....	23
b.	The District Court Did Not Abuse Its Discretion in Denying Drexel’s Motion to Strike Declarations by Three SodexoMAGIC Witnesses.	28
c.	Drexel’s Remaining Counterarguments for Upholding Summary Judgment in Its Favor Also Fail.	34
3.	The Parol Evidence Rule Does Not Bar Sodexo- MAGIC’s Claim for Fraudulent Inducement.	36
a.	Integration Clauses, the Parol Evidence Rule, and Fraudulent Inducement Claims Under Pennsylvania Law.....	37

b.	The Management Agreement Lacks Fraud- Insulating Provisions, so the Parol Evidence Rule Does Not Preclude SodexoMAGIC’s Fraudulent Inducement Claim.	42
4.	Pennsylvania’s Gist of the Action Doctrine Does Not Bar SodexoMAGIC’s Fraud Claim.....	44
5.	Drexel’s Fraudulent-Inducement Counterclaim Fails	47
B.	SodexoMAGIC’s Breach-of-Contract Claim for Failure to Renegotiate in Good Faith Survives Summary Judgment.	51
1.	A Promise to Renegotiate in Good Faith May Be Enforceable Under Pennsylvania Law, and the Promise Between These Parties Is Enforceable. ..	51
2.	A Genuine Dispute of Material Fact Remains as to Whether Drexel Renegotiated in Good Faith...	59
C.	SodexoMAGIC’s Claim for Enhanced Payments for Fall 2016 Survives Summary Judgment.	65
1.	There Was Consideration for a Separate Contract for the Fall 2016 Semester.....	65
2.	A Reasonable Jury Could Find that SodexoMAGIC Accepted Drexel’s Offer.	66
D.	Drexel’s Challenge to SodexoMAGIC’s Catering- Shortfall Claim Fails.....	68
E.	SodexoMAGIC’s Claims for Unjust Enrichment Fail.	70
V.	Conclusion	73

I. INTRODUCTION

After a long-standing business relationship went bad, this, the ensuing litigation, went big. For years, a vendor provided food services at a private university, but in 2014 the university announced that it would competitively bid the contract for on-campus dining. Although the same vendor ultimately won that competition, the process of bidding, negotiating, and finalizing that new contract fractured the relationship beyond repair. About two years into the contract's ten-year period of performance, the vendor sued the university for fraud, multiple breaches of contract, and alternatively for unjust enrichment. The university responded with fraud and breach-of-contract counterclaims.

In resolving cross-motions for summary judgment and attendant motions to strike, the District Court rejected the bulk of both parties' claims. All that survived summary judgment were relatively small pieces of the vendor's breach-of-contract claims and portions of the university's breach-of-contract claim. Rather than proceed to trial on the fragments of their respective cases, the parties referred the remaining claims and counterclaims to arbitration and jointly moved to dismiss them. The District Court granted that motion and entered final judgment, which the parties now appeal, primarily to dispute the summary judgment ruling.

In reviewing the District Court's summary judgment rulings *de novo*, see *Cranbury Brick Yard, LLC v. United States*, 943 F.3d 701, 708 (3d Cir. 2019), and the motion-to-strike order for an abuse of discretion, see *Daubert v. NRA Grp., LLC*, 861 F.3d 382, 389 (3d Cir. 2017), the District Court

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.