IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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| MICHAEL JAMES LAWSON, JR. and TARA LAWSON, individually and on behalf of all others similarly situated, Plaintiffs | : | CV-21-01134 |
| vs. | : | |
| PENNSYLVANIA COLLEGE OF TECHNOLOGY, Defendant | : | |

**OPINION AND ORDER**

AND NOW, this 13th day of March 2023, following argument on Defendant Pennsylvania College of Technology's Preliminary Objections to Plaintiff's Amended Complaint, the Court hereby issues the following Opinion and Order.

***BACKGROUND***

**A. Original Complaint and Preliminary Objections**

Plaintiffs commenced this case by filing a Class Action Complaint on October 12, 2020 in the Philadelphia County Court of Common Pleas, which transferred the case to Lycoming County on October 6, 2021. This Court addressed Defendant's outstanding Preliminary Objections[1] to Plaintiffs' original Complaint in an Opinion and Order dated June 29, 2022.

In that Order, the Court sustained four of Defendant's seven remaining preliminary objections. First, the Court found that inasmuch as Plaintiffs' Complaint alleged a contract based on a number of statements published in writing by

[1] The Philadelphia County Court of Common Pleas resolved Defendant's preliminary objection to venue in Philadelphia County by transferring the case to Lycoming County.

Defendant, Plaintiffs' failure to attach these writings violated Pennsylvania Rule of Civil Procedure 1019(i). Additionally, the absence of the specific writings prevented Plaintiffs from pleading with sufficient particularity the provisions of the alleged contract that they contend Defendant violated. More as a matter of form than content, the Court found that Plaintiffs' theories of express contract, implied contract, and unjust enrichment – which Plaintiffs pled in the alternative – must be contained in separate counts pursuant to Rule of Civil Procedure 1020(a). Finally, the Court struck Plaintiffs' request for attorney's fees from the Complaint's prayer for relief, without prejudice for Plaintiff to seek the apportionment of attorney's fees as authorized by Rule of Civil Procedure 1717 concerning class actions.[2] The Court granted Plaintiffs twenty days[3] to file an Amended Complaint attaching the documents forming the basis of the alleged contract,[4] specifying which specific statements form the contract and were breached by Defendant, and pleading alternative claims in separate counts.

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[2] The Court overruled Defendant's preliminary objections to 1) the standing of Tara Lawson; 2) the sufficiency of Plaintiffs' unjust enrichment claims; and 3) the viability of Plaintiffs' claims generally to the extent they can be characterized as alleging educational malpractice. It is well-established that Pennsylvania does not recognize a cause of action for educational malpractice. *See, e.g., Swartley v. Hoffner*, 734 A.2d 915 (Pa. Super. 1999); *Cavaliere v. Duff's Bus. Inst.*, 605 A.2d 397 (Pa. Super. 1992). As discussed below, however, Plaintiffs stress that the legal basis of their claim is not that Defendant offered a worse education generally but that Defendant offered Plaintiffs a certain "product" but kept the higher fees associated with a different "product" without refunding Plaintiffs the difference.

[3] The parties later agreed to extend the deadline for filing the Amended Complaint.

[4] Or explaining why those documents are unavailable.

## B. Amended Complaint

On July 28, 2022, Plaintiffs filed an Amended Complaint containing twelve counts. Plaintiffs brought counts for breach of express contract, breach of implied contract, and unjust enrichment relating to four separate topics: tuition, ancillary fees, housing, and meal plans.[5] Plaintiffs attached 185 pages of exhibits to the Amended Complaint, consisting primarily of excerpts from Defendant's website; Plaintiffs cite various portions of these exhibits throughout their Amended Complaint.

Plaintiffs' Amended Complaint includes twenty-one exhibits, beginning with web pages detailing Defendant's leadership structure and facts concerning Defendant's enrollment, educational programs, and employment prospects as of Fall 2019. Exhibit 3 is a table of "Allocations for Section 18004(a)(1) of the CARES Act,"[6] listing hundreds of institutions along with their "Total Allocation" and "Minimum Allocation to be Awarded for Emergency Financial Aid Grants to Students." Exhibit 4 is a report completed by Defendant discussing its allocation of these funds. Exhibits 5 through 8 are webpages from 2019 discussing Defendant's courses of study and academic calendar. Exhibit 9 is a report concerning Defendant's COVID-19 testing and results. Exhibits 10 through 18 consist of websites discussing Defendant's mission statement, connection to the Pennsylvania State University,

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[5] These four categories of claims are explained in detail in this Court's June 29, 2022 Opinion and Order.

[6] The CARES Act, signed into law on March 27, 2020, is a wide-ranging federal act implemented to address the COVID-19 pandemic. Section 18004(a)(1) of the CARES Act directed the Secretary of Education to provide institutions of higher education with funds "to prevent, prepare for, and respond to coronavirus," with the amount of funding apportioned based on enrollment and financial aid factors. Plaintiffs note that, according to Exhibit 3, Defendant received $5,341,470 in CARES Act funds.

and various aspects of campus life and educational programming. Exhibit 19 is an electronic catalogue of course descriptions for the courses in the diesel mechanic major. Exhibit 20 is a webpage providing links to information about Defendant's academic programs. Exhibit 21 is a website providing information about Defendant's on-campus housing and meal plan costs.

***PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT***

On August 15, 2022, Defendant filed four Preliminary Objections to Plaintiffs' Amended Complaint.[7] Defendant's first preliminary objection contends that Plaintiffs' Amended Complaint fails to comply with Rule 1019(i). Defendant's second and third preliminary objections are demurrers to Plaintiffs' breach of express contract claims and breach of implied contract claims, respectively. Defendant's fourth preliminary objection notes that Plaintiffs have retained their prayer for attorneys' fees, and reiterates Defendant's objection to that request.

**A. Applicable Law**

**1. Demurrer**

In ruling on preliminary objections in the nature of a demurrer, the Court must determine whether "on the facts averred, the law says with certainty that no recovery is possible.... Where a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it."[8] In deciding a demurrer, the

[7] Defendant notes in a footnote that it has not reproduced those preliminary objections this Court previously overruled in its June 29, 2022 Opinion and Order, though it maintains its position that the objections were sound and incorporates them for the purpose of preserving them on appeal.

[8] *Weiley v. Albert Einstein Medical Center*, 51 A.3d 202, 208-09 (Pa. Super. 2012).

Court must "accept as true all well-pleaded, material, and relevant facts alleged in the complaint and every inference that is fairly deducible from those facts."[9]

### 2. Existence and Breach of Contract

Eight of the twelve counts in the Amended Complaint allege the existence of a contract, which is "a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty."[10] The party alleging the existence of a contract must show "an offer, acceptance, [and] consideration or mutual meeting of the minds."[11] The existence of a contract depends on the parties' "outward and objective manifestations of assent, as opposed to their undisclosed and subjective intentions...."[12] When the facts are undisputed, whether those facts establish a contract is a matter of law; however, "[w]here the facts are in dispute, the question of whether a contract was formed is for the jury to decide."[13]

A contract can be either express or implied. Whereas "[a]n express contract is formed when the terms of an agreement are declared by the parties either verbally or in writing... [a] contract implied-in-fact is an actual contract which arises when parties agree on the obligation to be incurred, but their intention, instead of being expressed in words, is inferred from the relationship between the parties and

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[9] *Raynor v. D'Annunzio*, 243 A.3d 41, 52 (Pa. 2020).
[10] Restatement (Second) Contracts § 1 (1981).
[11] *Jenkins v. County of Schuylkill*, 658 A.2d 380, 383 (Pa. Super. 1995).
[12] *Ingrassia Const. Co., Inc. v. Walsh*, 486 A.2d 478, 483 (Pa. Super. 1984).
[13] *Id.* at 482.

their conduct in light of the surrounding circumstances."[14] An implied contract's "[o]ffer and acceptance need not be identifiable and the moment of formation need not be pinpointed."[15]

To allege a breach of either an express or implied contract, a party must plead "(1) the existence of a contract, including its essential terms; (2) a breach of the contract; and (3) resultant damages."[16]

### 3. Unjust Enrichment

Plaintiffs also allege, in the alternative, unjust enrichment. The elements of unjust enrichment are "(1) benefits conferred on defendant by plaintiff; (2) appreciation of such benefits by defendant; and (3) acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value."[17] Unlike a breach of contract claim, unjust enrichment does not depend on the intention of the parties but rather on the facts surrounding the defendant's receipt and retention of the benefit conferred by the plaintiff.[18] The existence of an express contract precludes a finding of unjust enrichment.[19]

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[14] *Braun v. Wal-Mart Stores, Inc.*, 24 A.3d 875, 942 (Pa. Super. 2011).
[15] *Ingrassia*, 486 A.2d at 483.
[16] *Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. v. Law Firm of Malone Middleman, P.C.*, 137 A.2d 1247, 1258 (Pa. 2016).
[17] *Mitchell v. Moore*, 729 A.2d 1200, 1203 (Pa. Super. 1999) (quoting *Schenck v. K.E. David, Ltd.*, 666 A.2d 327, 328 (Pa. Super. 1995)).
[18] *Id.* at 1203-04.
[19] *Id.* at 1203.

## 4. Educational Malpractice vs. Breach of Contract

Pennsylvania does not recognize a claim for educational malpractice.[20] Whether the relationship between a student and institution of higher learning is contractual in nature depends upon whether the institution is public or private.[21] Generally, "[t]he contract between a private institution and a student is comprised of the written guidelines, policies, and procedures as contained in the written materials distributed to the student over the course of their enrollment in the institution."[22] Pennsylvania law treats contracts between educational institutions and students no differently from other contracts.[23]

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[20] *See, e.g., Swartley v. Hoffner*, 734 A.2d 915 (Pa. Super. 1999); *Cavaliere v. Duff's Bus. Inst.*, 605 A.2d 397 (Pa. Super. 1992).

[21] *Compare Swartley*, 734 A.2d at 919 ("the relationship between a private educational institution and an enrolled student is contractual in nature") *with Tran v. State System of Higher Educ.*, 986 A.2d 179, 183 (Pa. Cmwlth. 2009) (noting the distinction between public and private institutions and concluding that a public university's handbook did not constitute a contract with a student). Here, Plaintiff pleads that "[a]lthough Defendant receives about 16.6% of its annual operating funds through state appropriations, it is not a state-owned public school. Defendant is not governed or managed by the Pennsylvania State System of Higher [E]ducation and the majority of its $118.5 Million operating budget is generated through tuition, fees, gifts, investments or otherwise." In footnote two of Defendant's Brief in Support of its Preliminary Objections, Defendant flatly states that Defendant "is a special mission affiliate of The Pennsylvania State University," and thus a "State-related institution and... an instrumentality of the Commonwealth of Pennsylvania...." Defendant cites case law in support of this contention. This argument, however, is not squarely before the Court at this time. Whether Defendant is a public institution such that its published statements can form a contract with enrolled students is a mixed question of law and fact, and Pennsylvania's Courts have not always found the determination of a university's status to be straightforward. *See Gati v. University of Pittsburgh of Com. System of Higher Education*, 91 A.3d 723, 730 n.12 (Pa. Super. 2014) (noting that courts have struggled and disagreed about the status of institutions such as the University of Pittsburgh and Temple University). Ultimately, Plaintiffs have adequately pled that Defendant is "not a state-owned public school," which is sufficient to raise a factual issue and warrant discovery.

[22] *Swartley*, 734 A.2d at 919.

[23] *Reardon v. Allegheny College*, 926 A.2d 477, 480 (Pa. Super. 2007).

The parties note that in the wake of the COVID-19 pandemic, numerous courts across the country have considered cases raising causes of action similar to those presented here. None of those decisions are binding precedent, though their reasoning may be of value to this Court. Those courts that have dismissed contract claims similar to Plaintiffs' here, generally note that statements in a university's publications may create certain expectations, but plaintiffs are often unable to cite specific contractual promises that the university has made.[24] The courts approving of such claims have noted that in most situations the existence and terms of a contract are questions for the factfinder, finding claims that students paid for one product and received another viable at the pleading stage.[25]

**B. <u>First Preliminary Objection – Rule 1019(i)</u>**

Defendant's first preliminary objection asserts that although this Court ordered Plaintiffs to "attach[] the relevant documents [establishing their contractual claims] or explain[] why they are inaccessible," Plaintiffs have still failed to "attach… writings which establish the right to relief…." More specifically, Defendant asserts that the exhibits do not render the contractual claims sufficient for at least three reasons: a) nothing in the exhibits clearly or specifically states that Defendant intended to be contractually bound; b) nothing in the exhibits constitutes a promise by Defendant to the benefit of any parent or student, such as Plaintiff; and

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[24] *See, e.g., Hickey v University of Pittsburgh*, 535 F.Supp.3d 372 (W.D. Pa. 2021); *Buccigrossi v. Thomas Jefferson University*, 2022 WL 1093127 (E.D. Pa. 2022).
[25] *See, e.g., Figueroa v. Point Park University*, 553 F.Supp.3d 259 (W.D. Pa. 2021).

c) Plaintiffs do not allege that they were aware of, considered, or accepted any terms in the exhibits.

Defendant ultimately avers that it remains unable to adequately prepare a defense, as it does not have notice of the contractual agreements which Plaintiffs allege Defendant has breached.

This preliminary objection relies on Rule of Civil Procedure 1019(i), which states:

> "When any claim or defense is based upon a writing, the pleader shall attach a copy of the writing, or the material part thereof, but if the writing or copy is not accessible to the pleader, it is sufficient so to state, together with the reason, and to set forth the substance in writing."

Here, Plaintiffs have obtained and attached to the Amended Complaint those documents which they referenced – but did not attach – in the original Complaint. It is clear from a fair reading of the Amended Complaint that Plaintiffs believe the statements in these documents are sufficient to form a contract; that is, they are the writings upon which Plaintiffs base their claims.

Although Defendant contends that the contents of the exhibits render them insufficient to satisfy the standard of Rule 1019(i), the Court reads the requirement to attach underlying writings as a separate step prerequisite to the analysis of the contents. In essence, Rule 1019(i) ensures that the parties and the Court will be able, when possible, to evaluate actual writings rather than the parties' representations of them. Thus, the Court concludes that Plaintiffs have satisfied Rule 1019(i) by attaching those documents forming the basis of their claims.

Whether those claims are legally sufficient in light of the contents of those documents is properly analyzed in a demurrer or similar challenge, such as Defendant's second and third preliminary objections.

### C. Second Preliminary Objection – Breach of Express Contract

#### 1. Amended Complaint and Arguments

As previously discussed, the gravamen of Plaintiffs' tuition claim is not that Defendant's online educational program is "worse" than the in-person program, whether abstractly or by some metric. Rather, it is that "after accepting... consideration from Plaintiffs and other members of the Tuition Class [for in-person, hands-on education], Defendant provided a materially different product, which deprived Plaintiffs... of the benefit of the bargain for which they had already paid." Despite doing so, Plaintiffs contend, "Defendant retained tuition monies paid by Plaintiffs... without providing them the full benefit of their bargain," namely, in-person learning. Plaintiffs make similar allegations regarding the other types of claims – essentially, that Defendant promised students housing, meals, and various in-person activities, but neither provided those products nor refunded the appropriate portion of the students' payments when COVID-19 made it impossible for Defendant to deliver.

Throughout the Amended Complaint, Plaintiffs cite a number of specific statements which they contend are express contractual provisions contained in Defendant's materials. The first of these is "the ability to be physically present on campus, and fully enjoy the facilities, services, opportunities, and hands-on

education provided thereon," which Plaintiffs claim is "so axiomatic and engrained into the culture of higher education generally and [Defendant institution] specifically that it is enshrined within Defendant's mission statement, vision statement, and values...." Defendant's mission statement refers to "*degrees that work* – grounded in a comprehensive, hands-on technical education – that empowers our graduates for success." Defendant's vision statement sees the institution as "a nationally recognized leader in applied technology education." The values promulgated by Defendant include "hands-on education" emphasizing "applied instruction in small classes and labs"; a "student-centered environment"; and a "partner[ship] with business and industry to keep our curriculum, technology, and equipment current...." Plaintiffs characterize Defendant's purpose as "bridging a gap that is not offered at other institutions," citing the statement on Defendant's website that Defendant "fills a unique role in the Penn State system, offering opportunities for technology-based, hands-on education and workforce development."

Plaintiffs go on to cite numerous statements made by Defendant concerning campus life, the on-campus education model, the institution's proximity to Williamsport and other areas. Many of these statements are made alongside further statements highlighting Defendant's "legacy [of] hands-on learning" and "cutting-edge facilities."

Plaintiffs next highlight statements made by Defendant concerning Defendant's hurried transition from in-person to remote learning at the beginning of the COVID-19 pandemic, and Defendant's statements concerning the transition

back. These statements include an "acknowledge[ment] [that] hands-on learning is [Defendant's] 'hallmark,'" and a "commit[ment] to in-person instruction in Fall 2020 in the safest and most responsible way possible."

Plaintiffs note that once Defendant accepts an applicant to attend its college, Defendant sends the applicant numerous communications, providing information about all aspects of campus life while continuing to highlight Defendant's hands-on approach to learning. Plaintiffs cite Defendant's "strict personal attendance requirements" and "prior course of conduct" as further factors establishing that Defendant offered not just an education but one that occurred on-campus. Plaintiffs cite the course descriptions for certain classes in the diesel mechanic program, attended by named Plaintiff Michael Lawson, which reference "hands-on" practice with brake systems and hydraulic equipment.

With regard to the express contractual claims regarding fees, Plaintiffs cite Defendant's website regarding "Tuition, Fees, and Charges," citing specific language from that document describing the various fees Defendant charges. Similarly, Plaintiffs cite Defendant's information regarding housing costs as establishing a specific cost in exchange for which Defendant promised to provide on-campus housing; Defendant breached this promise, Plaintiffs contend, by evicting the students and offering only "arbitrary" and "wholly deficient... partial refunds." Plaintiffs do not cite an attached exhibit explicitly regarding meal plans, though various exhibits discuss the ability of students to purchase meal plans.

Defendant asserts that Plaintiffs have not alleged specific contractual obligations that Defendant has breached, characterizing the various exhibits offered by Plaintiffs as "cherry-picked marketing and promotional materials" that do not include "specific contractual obligations breached by [Defendant]." Because a contractual claim requires the identification of specific provisions allegedly breached, Defendant both demurs to Plaintiffs' express contract claims and asserts those claims are insufficiently specific.

**2. Statement of Student Financial Responsibility**

Defendant, in its brief in support of its preliminary objections, cites a document titled Statement of Student Financial Responsibility (the "Statement"), which, Defendant avers, was created by Defendant and signed by Plaintiff Michael Lawson in November of 2019. Defendant asserts that the Statement, rather than any marketing or promotional materials, constitutes the contract between Defendant and Plaintiff Michael Lawson.

Defendant highlights two specific portions of the Statement. The first of these is a provision pursuant to which students agree that "when [they] register for any class at Pennsylvania College of Technology or receive any service from the College [they] accept full responsibility to pay all tuition, fees and other associated costs assessed… resulting from [their] registration and/or receipt of services." The second is an integration clause, which specfies that the Statement "supersedes all prior understandings, representations, negotiations and correspondence between the student and Pennsylvania College of Technology, constitutes the entire

agreement between the parties with respect to the matters described, and shall not be modified or affected by any course of dealing or course of performance." Defendant contends that these two provisions of the Statement, especially the latter, are fatal to Plaintiffs' contractual claims.[26]

Plaintiffs respond by noting that the Statement contemplates that the student's payment of tuition and other fees results from the student's "registration and/or receipt of services." Plaintiffs claim this actually buttresses their claim, which is that they paid for but did not receive services. Plaintiffs also cite another portion of the Statement, which states that if a student "drop[s] or withdraw[s] from some or all of [that student's] classes," the student "will be responsible for paying all or a portion of the [tuition and other fees]...." This provision at least suggests, Plaintiffs argue, that Defendant has acknowledged its duty to refund portions of tuition and other fees in certain circumstances.

### 3. Analysis

Defendant asserts that Plaintiffs' breach of express contract claims cannot go forward because the exhibits Plaintiffs attached to their Amended Complaint – and the portions of those exhibits highlighted therein – do not form a contract as a matter of law. This position can be further distilled to Defendant's contention that Plaintiffs have not identified any specific obligations to which Defendant committed. In other

[26] Defendant states it "is aware that it is unusual for a Defendant, at the preliminary objection stage, to mention a document that is not attached or explicitly referenced by Plaintiffs," but charges Plaintiffs with "hid[ing] this document from the Court and drag[ging] this case on for longer than is appropriate."

words, Defendant contends that Plaintiffs have not pled the existence of an offer, which is a vital element of an express written contract.[27]

The Court concludes that Plaintiffs have adequately pled the existence and breach of an express contract. Plaintiffs highlight numerous written statements published by Defendant emphasizing the institution's hands-on programs. Defendant contends that these statements are uniformly "descriptive" and "aspirational." However, at this stage, reading the exhibits in conjunction, the Court cannot definitively conclude as a matter of law that repeated references to "comprehensive, hands-on technical education" are insufficient to form an objective, written expression of Defendant's intent to contract. This is especially so in light of the repeated references throughout the exhibits highlighting Defendant institution's specialty in technical skills and trades, which could be interpreted to add weight to Defendant's assertions of its technical approach.

The Court further finds that Plaintiffs have sufficiently pled the existence and breach of express contracts concerning fees, meal plans, and housing. The exhibits reference each of these costs in concrete terms, asserting that the payment of the fees goes toward certain benefits (programs, food, housing) that return to the student.

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[27] Defendant also argues that Plaintiffs have not alleged that they were aware of or considered any relevant contractual terms, though Defendant does not significantly develop this argument. The Court finds that a fair reading of the Amended Complaint adequately avers that Plaintiffs were aware of at least some of the relevant alleged contractual terms. What Plaintiffs specifically did or did not know, and which of those things influenced Plaintiff Michael Lawson's decision to attend Defendant institution, are questions of fact.

The Court declines Defendant's invitation to dismiss the express contract claims on the basis of the Statement of Student Financial Responsibility. As Defendant recognizes, demurring parties typically may not introduce facts or evidence not of record. A demurrer that "requires the aid of a fact not appearing on the face of the pleading objected to" is a "speaking demurrer" and "cannot be considered in sustaining a preliminary objection."[28] Defendant notes a well-established exception to this prohibition "where a plaintiff avers the existence of a written agreement and relies upon it to establish his cause of action," which allows a defendant to "annex that agreement without creating an impermissible speaking demurrer since the agreement is a factual matter arising out of the complaint itself."[29] Here, however, Plaintiffs have not pled the existence of the Statement, nor premised their cause of action upon it.

Even if the Court could properly consider the Statement under the exception to the speaking demurrer rule, the Court has not had the benefit of the parties' full advocacy on how the Statement may or may not affect Plaintiffs' various surviving claims. It is possible that the Statement could ultimately form a partial or complete

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[28] *Regal Indus. Corp. v. Crum and Forster, Inc.*, 890 A.2d 395, 398 (Pa. Super. 2005).
[29] *Martin v. Com., Dept. of Transp.*, 556 A.2d 969, 971 (Pa. Cmwlth. 1989). The Commonwealth Court explained that when a plaintiff has "averred the existence of certain written documents and premised their... causes of action on those documents... the Pennsylvania Supreme Court [has] concluded... that the trial court could properly consider those documents, which were attached to the defendants' preliminary objections in the nature of a demurrer."

defense to those claims, but the Court cannot say at this stage that it does so as a matter of law.[30]

### D. Third Preliminary Objection – Implied Contract Claims

#### 1. Arguments

Defendant's third preliminary objection is to Plaintiffs' claims for breach of implied contract concerning the four classes of payments. Defendant first notes that "it is black-letter law that a contract implied in fact is a contract arising in the *absence* of an agreement," and argues that because "there is no claim within the Amended Complaint that there was an *absence* of [a] contract," Plaintiffs' implied contract claims fail as a matter of law. Defendant further argues that Plaintiffs have failed to show any obligations which the parties agreed upon, either through the exhibits or by any other means, as would be required to support implied contract claims. Finally, Defendant asserts that "[e]ven if the Exhibits did contain language arising to the level of contractual obligations, Plaintiffs do not allege (a) which obligations the College allegedly breached or (b) how the College breached them."

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[30] In particular, the Statement's broad integration clause appears relevant to Plaintiffs' contractual claims. However, the Statement appears to discuss each student's responsibilities in great detail while only briefly referring to Defendant's responsibilities to provide unspecified "services" and "classes." There is no discussion of what occurs if Defendant fails to provide these services. If a student signed the Statement and paid a semester's tuition, and Defendant simply failed to offer any classes, it seems unlikely Defendant could rely on the integration clause to retain the entirety of the student's tuition. Nothing in the Statement, however, contemplates any remedy to the student in such a scenario. Although Plaintiffs do not allege such a drastic situation, it is at least possible that factual circumstances external to the Statement will affect the application of the integration clause despite its language.

Plaintiffs respond that the statements published by Defendant and included in the exhibits, in addition to the Defendant's conduct, established an implied contract. Specifically, Plaintiffs assert that "it is clear from the facts and circumstances that Defendant offered two separate and distinct products, one being live, in-person, on-campus education, with its featured ancillary and related services, and the other being online distance education."

As noted, both parties have marshalled persuasive authority in support of their cases. This Court has previously lamented that many of those cases simply reach opposite conclusions on similar facts, preventing the Court from extracting a coherent theory. Consider the following passage from *Buccigrossi*:

> "Plaintiff also fails to state an 'implied' breach of contract claim... [T]he existence of the parties' contract and what was agreed to may be established by the 'written guidelines, policies, and procedures as contained in the written materials distributed to the student over the course of their enrollment in the institution.' Not every statement in a university's written material creates a contractual obligation as there must be specific and identifiable promises the school failed to honor. Indeed, the only implied contract that Pennsylvania case law has recognized in the educational context is the 'reasonable expectation on statements of policy by [the university] and the experience of former students that if he performs the required work in a satisfactory manner and pays his fees, he will receive the degree he seeks.' ...
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> Even if Pennsylvania law permitted an implied, breach of contract claim for an in-person education... to the extent information posted on a university's registration portal or course catalog encourage[s] a student to enroll in what was thought to be an in-person class, this material does not, by itself, create a basis for an implied, breach of contract. If that were the case, then by the same logic, universities could be said to promise hundreds of other details that would render them in breach for a variety of day-to-day issues they may face, such as unforeseen building repairs or the unavailability of a particular professor. It is understood that course catalogs, syllabi and

> registration materials generally show what a University or College *tentatively* planned, not what they *guarantee* will happen."[31]

Contrast that passage with the following analysis from *Figueroa*:

> "For Plaintiffs to maintain a claim for breach of contract, the Complaint allegations must of course be 'sufficient to draw the reasonable inference that the parties engaged in conduct giving rise to an implied-in-fact contract' under the presently applicable standard. And ultimate determinations of a contract's existence and terms are for the finders of fact. ...
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> Plaintiffs point to the written materials informing their contractual relationship with Defendant [University] (*e.g.*, promotional materials, circulars, admissions papers, and publications) assertedly evidencing a mutual understanding that tuition and other charges on students' accounts were paid for components of their traditional post-secondary education, *i.e.* one delivered in-person and on campus. Plaintiffs have satisfactorily alleged that [the defendant university] should have reasonably foreseen that they would expect, when they were billed for the Spring 2020 semester, that [the defendant university] would continue providing the traditional education benefits/services allegedly promised, or refund the tuition and fee premiums paid/difference in value. ...
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> Plaintiffs sufficiently plead an implied contract under Pennsylvania law 'to provide in-person, on-campus instruction, experiences, and activities.' They specifically allege that [the defendant university] promised – in the official materials promulgated in electronic and print form during the students' enrollment – a particular method of instruction for which students paid a premium in tuition and fees, but delivered a lower-cost option which the students had previously declined."[32]

In short, reasonable minds may differ as to the proper treatment of claims such as Plaintiffs' at the pleading stage.

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[31] *Buccigrossi*, 2022 WL 1093127 at *3 (internal citations omitted).
[32] *Figueroa*, 553 F.Supp.3d at 270-74 (internal citations omitted).

### 2. Analysis

The Court concludes that Plaintiffs have adequately pled each of their breach of implied contract claims.

Although Defendant argues that the Amended Complaint is replete with *express* contractual claims and fails to plead the *lack* of a written agreement, the Court reads the Amended Complaint to fairly plead the existence of implied contracts as an alternative theory to the existence of an express contract.

Defendant further asserts that Plaintiffs have failed to show the existence of mutually agreed upon obligations. The Court concludes, however, that Plaintiffs have adequately *pled* the existence of implied contracts, consisting of mutual obligations defined by the entirety of the facts, circumstances and evidence averred in the Amended Complaint. The Court agrees in the abstract with the statement in *Buccigrossi* that a university's written material "does not, by itself, create a basis for an implied, breach of contract...." Plaintiffs have alleged, however, not just what is in the exhibits but also the parties' conduct, broader circumstances, and factual situation. Of note, Plaintiffs contend that *more than other institutions*, Defendant focuses its course of study on skilled trades that are simply impossible to learn remotely. It strikes the Court as reasonable that Defendant's past conduct and published assertions concerning hands-on, in-person education could have heightened import under the facts presented in this case.

Plaintiffs contend that all of these things, taken together, suggest that Defendant agreed to offer classes in person in exchange for the requisite tuition,

offer on-campus benefits in exchange for specific fees, and offer meals and housing in exchange for certain defined payments. Inasmuch as "ultimate determinations of a contract's existence and terms are for the finders of fact," the Court finds that Plaintiffs have asserted sufficient facts and evidence to preclude the dismissal of their implied contract claims at this time.

### E. Fourth Preliminary Objection – Attorney's Fees

This Court previously addressed the issue of attorney's fees in its June 29, 2022 Opinion and Order addressing Defendant's preliminary objections to the original Complaint. At that time, the Court sustained Defendant's objection to Plaintiffs' prayer for attorney's fees. Defendant's renewed preliminary objection to attorney's fees notes that Plaintiffs appear to have asserted an identical claim to that previously struck.

Under the American Rule, attorney's fees are typically not available to a prevailing party unless explicitly authorized by some provision of law.[33] Rule of Civil Procedure 1717 provides factors the court is to consider in "fix[ing] the amount of counsel fees" in class actions; the note to Rule 1717 provides that it "does not determine when fees may be awarded," which "is a matter of substantive law."[34]

The question of how attorney's fees are apportioned from that party's total recovery is distinct from the question of whether a party may recover attorney's fees *in addition to* compensatory damages. In most cases, the former question is

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[33] *Trizechahn Gateway, LLC v. Titus*, 976 A.2d 474, 482-83 (Pa. 2009).
[34] Pa. R.C.P. 1717.

determined prior to litigation by agreement of counsel and client; in class actions, the Court often performs this apportionment at the conclusion of the case, in accordance with Rules of Civil Procedure 1716 and 1717. As Rule 1717 makes clear, however, the latter question has the same answer in class actions as in other civil actions: attorney's fees are only recoverable from an opposing party when explicitly authorized by law.

Here, Plaintiffs' Amended Complaint requests attorney's fees "as permitted by law"; however, Plaintiffs have not pled a legal justification for an award of attorney's fees. Thus, under the American Rule, they are not entitled to recover attorney's fees from Defendant. Therefore, the Court will strike Plaintiffs' request for attorney's fees with prejudice.

**ORDER**

AND NOW, for the foregoing reasons, the Court hereby OVERRULES Defendant's first, second, and third objections to Plaintiffs' Amended Complaint. The Court SUSTAINS Defendant's fourth objection to Plaintiffs' Amended Complaint. All references to attorney's fees are hereby stricken from the Amended Complaint with prejudice. Defendant shall file an Answer to the Amended Complaint within twenty (20) days of the date of this Order.

IT IS SO ORDERED this 13th day of March 2023.

BY THE COURT,

Eric R. Linhardt, Judge

ERL/jcr

cc: Stuart A. Carpey, Esq.
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