CLOSING

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
MADELINE COX ARLEO
UNITED STATES DISTRICT JUDGE

MARTIN LUTHER KING COURTHOUSE
50 WALNUT ST. ROOM 4066
NEWARK, NJ 07101
973-297-4903

May 27, 2021

VIA ECF

LETTER ORDER

Re: Hannah Kostic, et al. v. Seton Hall University
Civil Action No. 20-5566

Dear Litigants:

This matter comes before the Court on Defendant Seton Hall University's ("Seton Hall" or "Defendant") Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), ECF No. 21. Plaintiffs Hannah Kostic ("Kostic") and Jeffry Kostic (jointly, "Plaintiffs") oppose the Motion. ECF No. 22. For the reasons set forth below, the motion is **GRANTED**.

I. BACKGROUND[1]

This putative class action arises out of Seton Hall's decision to shift to remote learning in Spring 2020 due to the onset of the COVID-19 pandemic. See generally Am. Compl., ECF No. 14. Plaintiffs seek to recover a prorated refund of tuition and fees because in-person education, services, and opportunities were not provided for the entirety of the Spring Semester 2020 (the "Semester"). Id. ¶¶ 11, 14.

The Semester began on or around January 13, 2020 and concluded on or around May 12, 2020. Id. ¶¶ 8, 30. Leading up to the start of the Semester, Plaintiffs allegedly consulted Seton Hall's Undergraduate Course Catalogue to enroll Kostic, an undergraduate student at Seton Hall, in courses. Id. ¶ 20; see also Declaration of Angelo A. Stio III ("Stio Decl.") Ex. A, ECF No. 21.3 ("Undergraduate Course Catalogue"). The Course Catalogue allowed students to choose courses based in part on whether they were to be taught in person, on-line, or in a "Hybrid – In Person and On-Line" format. Am. Compl. ¶¶ 6, 20. Allegedly, every class that Plaintiffs chose was scheduled to be taught in-person at Seton Hall's South Orange campus. Id. ¶¶ 20-22. After choosing courses,

[1] The facts are drawn from the Amended Complaint, ECF No. 14, and documents that are "integral to or explicitly relied upon in the complaint." In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1426 (3d Cir. 1997) (emphasis omitted).

Plaintiffs allegedly paid tuition costs for the Semester as well as additional mandatory fees associated with the Semester, such as a University Fee, Mobile Computing Fee, and Technology Fee. Id. ¶¶ 31-33.

On March 10, 2020, following Governor Phil Murphy's ("Governor Murphy") declaration of a state of emergency in New Jersey due to the COVID-19 pandemic, Seton Hall announced that it would suspend all in-person classes beginning March 11. Id. ¶ 36; see also Stio Decl. Ex. C, ECF No. 21.5. On March 12, 2020, Seton Hall announced that it would extend the suspension of in-person classes through April 13, 2020. Stio Decl. Ex. D, ECF No. 21.6. Shortly thereafter, Governor Murphy issued an Executive Order ordering all institutions of higher education to cease in-person instruction. Id. Ex. E, ECF No. 21.7. On March 18, 2020, Seton Hall announced that it would continue remote learning for the remainder of the Semester. Id. Ex. G, ECF No. 21.9 (the "March 18 Announcement"); Am. Compl. ¶ 37. In the March 18 Announcement, Seton Hall explained that students would receive prorated refunds for room, board, and parking. Mar. 18 Announcement; see also Stio Decl. Ex. J, ECF No. 21.12.

On September 9, 2020, Plaintiffs filed the Amended Complaint, alleging that the remote learning opportunities "offered to Seton Hall students are subpar in practically every aspect, from the lack of facilities, materials, and access to faculty." Am. Compl. ¶ 11. Plaintiffs contend that by suspending all in-person classes, "Defendant did not deliver the educational services, facilities, access and/or opportunities that Plaintiffs . . . contracted and paid for." Id. Based on these allegations, Plaintiffs assert breach of contract, id. ¶¶ 52-64 ("Count I"), unjust enrichment, ¶¶ 65-71 ("Count II"), conversion, ¶¶ 72-79 ("Count III"), and money had and received, ¶¶ 80-87 ("Count IV"). As relief, Plaintiffs seek "a refund of tuition and fees for in-person educational services, facilities, access and/or opportunities that Defendant has not provided." Id. ¶ 15.[2]

Defendant filed the instant Motion on October 22, 2020, contending that Plaintiff's Amended Complaint should be dismissed for failure to state a claim under Rule 12(b)(6). ECF No. 21.

II. LEGAL STANDARD

In resolving a Rule 12(b)(6) motion to dismiss, the Court accepts all pleaded facts as true, construes the complaint in the plaintiff's favor, and determines "whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." Phillips v. Cnty. of Allegheny, 515 F.3d 224, 233 (3d Cir. 2008) (internal quotation marks and citation omitted). To survive a motion to dismiss, the claims must be facially plausible, meaning that the pleaded facts "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). The allegations must be "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007).

[2] Plaintiffs also seek "prejudgment interest on all amounts awarded" and reasonable attorneys' fees and expenses. Am. Compl. at 22.

III. DISCUSSION

Defendant contends that each of Plaintiffs' causes of action fail to state a claim upon which relief may be granted. The Court agrees.[3]

A. Breach of Contract

Plaintiffs allege that the parties entered into a contract in which Defendant agreed to provide in-person educational services in return for tuition payments and that Defendant breached the contract by failing to provide in-person services for the entirety of the Semester. Am. Compl. ¶¶ 54-60. As evidence that the parties contracted for in-person educational services, Plaintiffs point to the Spring Semester 2020 Undergraduate Course Catalogue, which indicated that the courses selected by Kostic would be offered in person. Id. The Court concludes, as a matter of law, that the parties did not contract to provide Kostic with in-person services and thus Seton Hall did not breach its contractual obligations as a result of its decision to transition to remote learning due to the COVID-19 pandemic.

New Jersey courts have consistently declined to find the existence of an express contractual promise based "on isolated provisions in a student manual." Cruz v. Seton Hall Univ., No. 11-1429, 2012 U.S. Dist. LEXIS 96005, at *19 (D.N.J. July 10, 2012) (quoting Romeo v. Seton Hall Univ., 378 N.J. Super 384, 395 (App. Div. 2005)); see also Dougherty v. Drew Univ., No. 21-249, 2021 WL 1422935, at *5 (D.N.J. Apr. 14, 2021) ("It makes little sense to treat statements in a course catalog as express, contractual promises; they are not phrased as such, and frankly they seem more in the nature of objectives, desires and hopes.") (quotation marks and citations omitted). In fact, "New Jersey courts stress that the student-university relationship cannot be addressed 'in pure contractual . . . terms.'" Dougherty, 2021 WL 1422935, at *4 (quoting Napolitano v. Trs. of Princeton Univ., 186 N.J. Super. 548, 566 (App. Div. 1982)). Rather, courts consider breach of contract claims based on similar course catalogues or student manuals under a "quasi-contract" theory, wherein the operative inquiry is whether the university acted "in good faith" and dealt "fairly with its students." Id., 2021 WL 1422935, at *4 (citing Beukas v. Bd. of Trs. of Farleigh Dickinson Univ., 255 N.J. Super. 552, 567-68 (App. Div. 1991); see also Notice by Seton Hall of Supplemental Authority, ECF No. 36.

Plaintiffs do not allege, nor could they, any facts suggesting that Seton Hall failed to act in good faith or deal fairly with its students. Seton Hall suspended in-person classes and transitioned

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[3] As an initial matter, Defendant argues that the Amended Complaint should be dismissed because it is effectively an impermissible claim for educational malpractice. The Court agrees with Defendant that educational malpractice is not a cognizable claim under New Jersey law, Myers v. Medford Lakes Bd. of Educ., 199 N.J. Super. 511, 514 (App. Div. 1985), and that contract claims asking courts to consider the quality of education received are interpreted as impermissible educational malpractice claims, see Swidryk v. Saint Michael's Med. Ctr., 201 N.J. Super. 601, 603 (Ch. Div. 1985). That said, viewing the Amended Complaint in the light most favorable to Plaintiffs, the claims here do not require that the Court "engage in a qualitative analysis of the education and experience that Seton Hall offered before the Executive Order and after the Executive Order," Def. Mem. at 12, ECF No. 21.1, but rather ask the Court to consider whether Defendant breached a contract allegedly requiring in-person education, see Am. Compl. ¶¶ 3, 14, 38. This is an inquiry that the Court can undertake without second-guessing academic judgments or the quality of education a school provides. See In re Columbia Tuition Refund Action, Nos. 20-3208 & 20-3210, 2021 WL 790638, at *6 & n.5 (S.D.N.Y. Feb. 26, 2021) (holding the same and summarizing recent decisions in regard to similar COVID-19-related restrictions).

to remote learning due to the COVID-19 pandemic, and in order to comply with Governor Murphy's Executive Order and to protect the health of its students and faculty. Am. Compl. ¶ 35; Stio Decl. Exs. C-E. Moreover, Seton Hall continued to offer its students credits earned, ensured that students would receive their diplomas, and offered students more flexibility by broadening its pass/fail procedures. Stio Decl. Ex. G. The Amended Complaint recognizes these facts, which bely a finding of bad faith. Therefore, the Amended Complaint has failed to allege that Defendant breached any quasi-contractual duty to Kostic. See Dougherty, 2021 WL 1422935, at *6-7 (applying New Jersey law to hold that university did not breach a contract with students based on course catalogue when it transitioned to remote learning due to the COVID-19 pandemic).

Additionally, even if the Course Catalogue created an express contractual relationship between the parties as Plaintiffs urge, the Catalogue does not require in-person services by its terms. The Catalogue explicitly "reserves [Seton Hall] the right to make changes, as certain circumstances require." Undergraduate Course Catalogue, at 1.[4] The Catalogue proceeds to inform students that Seton Hall "reserves the right to cancel any course for which registration is insufficient, change the time and place of any course offered, and change the professor assigned to teach the course." Undergraduate Course Catalog, at 14 (emphasis added). Additionally, the Course Catalogue explains that Seton Hall "reserves the right to close, cancel or modify any academic program and to suspend admissions to any program." Undergraduate Course Catalog, at 11 (emphasis added). Transitioning classes to remote learning due to the COVID-19 pandemic no doubt falls within Seton Hall's authority reserved in the Course Catalogue.

Moreover, courts in New Jersey interpreting similar reservation of rights clauses in course catalogues have consistently concluded that changes to academic schedules fall within such reservations. Most relevant is Dougherty v. Drew University, where this Court considered nearly identical allegations by a student and her parent regarding Drew University's decisions to change in-person course offerings as a result of the COVID-19 pandemic. There, the Court interpreted a provision reserving "the University the right in its sole judgment to make changes of any nature in the University's academic program" as explicitly reserving the University's right to transition to virtual education due to the COVID-19 pandemic. Dougherty, 2021 WL 1422935, at *7; see also Beukas, 255 N.J. Super. at 554, 564-65 (interpreting provision reserving university "the right in its sole judgment to make changes of any nature in the University's academic program, . . . includ[ing], without limitation, the elimination of colleges" as covering close of dental school for financial reasons); Cruz, 2012 U.S. Dist. LEXIS 96005, at *19 (interpreting provision reserving university "the right to move a Resident from one room to another when the University determines, in its sole and absolute discretion that the move is in the Resident's best interest or those of his/her fellow students" as covering a housing change allegedly due to a student's sexual orientation).[5]

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[4] Page numbers refer to the PDF document submitted to the Court.

[5] Other courts across the country have reached the same conclusion when considering a university's authority to transition to virtual learning due to COVID-19. See Shaffer v. George Washington Univ., No. 20-1145, 2021 WL 1124607, at *3 (D.D.C. Mar. 24, 2021) (interpreting provision "reserv[ing] the right to change courses, programs, fees, and the academic calendar, or to make other changes deemed necessary or desirable, giving advance notice of change when possible" as allowing university to transition to virtual learning as a result of COVID-19 pandemic);

Plaintiffs' arguments to the contrary are unpersuasive. Plaintiffs contend that the Course Catalogue's reservation of rights is overly broad and thus should not be interpreted at this stage of the proceedings. But the mere fact that the reservation of right is broadly phrased does not necessarily mean that it is ambiguous. See Dougherty, 2021 WL 1422935, at *7 (citing Cherry Hill Towne Ctr. Partners, LLC v. GS Park Racing, L.P., No. 18-12868, 2019 WL 4187836, at *6 n.10 (D.N.J. Sept. 4, 2019) (agreeing with defendant that plaintiff had "conflat[ed] breadth with ambiguity") (quotation marks and citations omitted). As discussed above, the reservation of rights in the Course Catalogue is not at all ambiguous; it reserves Seton Hall's right to change the time and place of any course offered, thereby explicitly refuting Plaintiffs' breach of contract allegation.

Plaintiffs also point to other publications outside of the Course Catalogues, such as "course specific syllabi and the University Policies, including the Class Absence Notification Procedure" as well as some of the fees that Plaintiffs were charged. Am. Compl. ¶¶ 7, 17-19. According to Plaintiffs, based on these publications as a whole, the Court should infer a contract from the conduct of the parties. This argument gets Plaintiffs nowhere. In fact, when considering other publications, it becomes clear that the narrow construction of the Course Catalogue proposed by Plaintiffs is inappropriate. For example, along with the Course Catalogue, Kostic signed a Tuition and Fee Agreement when she began her academic career at Seton Hall. See Stio Decl. Ex. L. The Tuition and Fee Agreement confirms Plaintiffs' understanding that they are "responsible to pay for all classes in which [they are registered] after the final day of the term's drop/add period," irrespective of whether the classes change time, location, or instructor. Id. And the Course Catalogue also explicitly ties tuition to the number of credits earned, not to the fact that courses are taught in-person. Undergraduate Course Catalogue, at 9. These additional publications bolster the conclusion that the parties did not contract for in-person course offerings.

For all of these reasons, Plaintiffs have failed to state a claim for breach of contract. Count I is therefore dismissed.[6]

B. Remaining Claims

In addition to Plaintiffs' breach of contract claim, Plaintiffs maintain claims of unjust enrichment, conversion, and money had and received. Like Plaintiffs' breach of contract claims, these claims also fail as a matter of law.

Gociman v. Loyal Univ. of Chi., No. 20-3116, 2021 WL 243573, at *4 (N.D. Ill. Jan. 25, 2021) (interpreting provision "reserv[ing] the right to change, at any time, without notice . . . curriculum, course structure and content . . . notwithstanding any information in this catalog" as allowing university to transition to virtual learning as a result of COVID-19 pandemic); Lindner v. Occidental Coll., No. 20-8481, 2020 WL 7350212, at *9 (C.D. Cal. Dec. 11, 2020) ("[T]he fact that Occidental provides in-person instruction under ordinary circumstances, does not prevent Occidental from exercising its rights under the 2019-2020 Catalog to modify its programs, including during a national emergency, such as the Covid-19 global pandemic.") (quotation marks and citations omitted).

[6] In Dougherty, the Court concluded that plaintiffs failed to state a claim for breach of contract based on tuition payments but held that they had stated a claim for breach of contract associated with other fees. See Dougherty, 2021 WL 1422935, at *12. Here, however, Plaintiffs do not argue that their breach of contract claim should survive absent the tuition claims nor could they, because Plaintiffs' breach of contract claim is based exclusively on their tuition payments. See Am. Compl. ¶ 58 ("Tuition for Spring Semester 2020 was intended to cover in-person educational services from January through May 2020. In exchange for tuition monies paid, Class members were entitled to in-person educational services through the end of the Spring Semester.") (emphasis added).

First, although a plaintiff can plead an unjust enrichment claim "in the alternative," see Dzielak v. Whirlpool Corp., 26 F. Supp. 3d 304, 331 (D.N.J. 2014), Plaintiffs have failed to sufficiently allege such a claim here. "To establish unjust enrichment, a plaintiff must show both that defendant received a benefit and that retention of that benefit without payment would be unjust." VRG Corp. v GKN Realty Corp., 135 N.J. 539, 554 (1994). For many of the reasons stated above, Plaintiffs have failed to allege that it was unjust for Seton Hall to wrongfully retain tuition payments. Plaintiffs tuition payments were not intended to cover in-person educational services, but rather were in exchange for credits earned. Moreover, Kostic continued to receive remote instruction and received credits for the courses that she took in the Semester. Dismissal of Count II is therefore warranted. See Dougherty, 2021 WL 1422925, at *8-9 (dismissing unjust enrichment claim for university's decision to transition to remote learning due to COVID-19 pandemic).

Second, "a plaintiff asserting a claim for conversion must establish the defendant violated an independent legal duty and committed a tort, apart from the duty imposed by the contract." Qingdao Zenghui Craftwork, Co. Ltd. v. Bijou Drive, No. 16-6296, 2019 WL 2403197, at *4 (D.N.J. June 7, 2019). Plaintiffs' conversion claim is based on the same predicate facts as Plaintiffs' breach of contract claim. See Am. Compl. ¶¶ 74-75 (alleging that "Plaintiffs . . . have an ownership right to the in-person educational services they were supposed to be provided in exchange for their Spring Semester 2020 tuition and fee payments" and that "Defendant intentionally interfered with the rights of Plaintiffs . . . when it moved all classes to an online format"). Plaintiffs' conversion claim is therefore simply an attempt "to turn a claim based on breach of contract into a tort claim." D&D Tech., Inc. v. CytoCore, Inc., No. 14-4217, 2014 WL 4367314, at *4 (D.N.J. Sept. 2, 2014). Count III is thus dismissed.

Third, Plaintiffs claim for money had and received (Count IV) must be dismissed for the same reasons their unjust enrichment claim is dismissed. See Dougherty, 2021 WL 1422935, at *10 ("The elements of [money had and received] are essentially the same as those for unjust enrichment," and "federal courts have construed them in parallel.").

IV. CONCLUSION

For the reasons stated above, Defendant's Motion to Dismiss, ECF No. 21, is **GRANTED**. This matter is now **CLOSED**.

SO ORDERED.

/s Madeline Cox Arleo
MADELINE COX ARLEO
UNITED STATES DISTRICT JUDGE