NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1843-20
A-3091-20

JACQUELINE BERNAL
MUELLER and ANDREW
MUELLER, individually and on
behalf of others similarly
situated,

APPROVED FOR PUBLICATION
December 30, 2022
APPELLATE DIVISION

Plaintiffs-Appellants,

v.

KEAN UNIVERSITY,

Defendant-Respondent.

____

ATHENA BROCK-MURRAY,
individually and on behalf of all
others similarly situated,

Plaintiff-Appellant,

v.

KEAN UNIVERSITY,

Defendant-Respondent.

____

COLIN KEYES, individually and on
behalf of all others similarly situated,

Plaintiff-Appellant,

v.

MONTCLAIR STATE
UNIVERSITY,

Defendant-Respondent.

____

Submitted December 13, 2022 – Decided December 30, 2022

Before Judges Sumners, Geiger and Susswein.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Docket No. L-1538-20 and Essex County, Docket No. L-2947-20.

Bursor & Fisher, PA, attorneys for appellants (Philip L. Fraietta and Andrew J. Obergfell, on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondents (Melissa H. Raksa, Assistant Attorney General, of counsel; Michael R. Sarno, Deputy Attorney General, on the briefs).

The opinion of the court was delivered by

GEIGER, J.A.D.

These appeals present an issue of first impression – whether plaintiffs state viable claims for breach of contract, unjust enrichment, conversion, or money had and received, based on the universities they attended transitioning to total online instruction rather than an in-person, on-campus education experience for which they paid, during the statewide health emergency caused by the COVID-19 pandemic. The universities contend they are immune from

liability pursuant to the Emergency Health Powers Act (EHPA), N.J.S.A. 26:13-1 to -36, because their decisions to pause in-person instruction were made in compliance with the executive orders issued by the Governor during a public health emergency to limit the spread of COVID-19 among students, faculty, and the community. We affirm the dismissal of plaintiffs' complaints, concluding the universities are immune from liability under N.J.S.A. 26-13-19.

In these appeals, which we have consolidated for purposes of issuing a single opinion, plaintiffs Andrew Mueller,[1] and Athena Brock-Murray were fulltime undergraduate students at Kean University. Colin Keyes was a fulltime undergraduate student at Montclair State University. They filed these putative class actions asserting claims for breach of contract, unjust enrichment, conversion, and money had and received.

On March 10, 2020, Kean announced that because of the COVID-19 pandemic, all classes would be held remotely beginning March 16, 2020. That same day, Montclair announced that because of the COVID-19 pandemic, Spring Break would be extended, and beginning March 23, 2020, all classes would be held remotely. Kean and Montclair did not any hold in-person classes after March 6, 2020, for the rest of the spring semester.

---

[1] Plaintiff Jacquelin Bernal Mueller is Andrew Mueller's mother. She paid a portion of her son's tuition for the spring 2020 semester.

Plaintiffs allege they lost the benefit of the in-person education and services that they paid for, without having their tuition and fees refunded to them. They claim Kean and Montclair did not "deliver[] the educational services, facilities, access and/or opportunities that they contracted and paid for." Plaintiffs stated that they "did not choose to attend an online institution of higher learning," and instead enrolled at Kean and Montclair "for an on-campus, in person curriculum." Plaintiffs contend the online options offered to Kean and Montclair students

> were subpar in practically every aspect, from the lack of facilities, materials, and access to faculty. Students have been deprived of the opportunity for collaborative learning and in-person dialogue, feedback, and critique. The remote learning options [were] in no way the equivalent of the in-person education that [p]laintiff[s] and the putative class members contracted and paid for.

In their respective complaints, plaintiffs sought a proportional refund through disgorgement of the tuition and fees they paid "for services, facilities, access and/or opportunities" that Kean and Montclair did not provide during the Spring 2020 semester due to the switch to online learning.

Kean and Montclair filed Rule 4:6-2(e) motions to dismiss plaintiffs' complaint for failure to state a claim upon which relief can be granted. The trial courts granted the motions, finding the EHPA immunized Kean and Montclair from liability. Plaintiffs appeal from those orders. We affirm.

On March 9, 2020, Governor Murphy issued Executive Order (EO) 103 in response to the outbreak of COVID-19. Governor Murphy declared a "Public Health Emergency and State of Emergency." EO 103 authorized and directed several State agencies and officials to take action to protect "the health, safety and welfare" of New Jersey citizens related to the outbreak. Pertinent here, EO 103 authorized the Department of Education to take appropriate steps to "protect[] the health and well-being of students."

On March 16, 2020, Governor Murphy issued EO 104, which "established statewide social mitigation strategies for combatting COVID-19." EO 104 stated that schools are locations where significant numbers of people congregate, "often in close proximity in classrooms, hallways, cafeterias, and gymnasiums." As a result, the Governor ordered that all institutions of higher education cease in-person instruction beginning March 18, 2020, and continuing so long as EO 104 remained in effect. EO 107, issued on March 21, 2020, maintained this directive.

Claims Against Kean University

Kean is a public university with over 16,000 students, offering more than fifty in-person bachelor's degree programs and eight online programs allowing students to pursue certain degrees without ever coming to campus for classes. Each registering Kean student was required to agree to the terms and

conditions set forth in the Financial Obligation Agreement for Academic Course Enrollment at Kean University (FOA). The FOA stated that the student was "fully responsible for the cost and expense of all tuition, fees, housing, meal plan costs and other related educational expenses associate with [his or her] enrollment in academic courses." A failure to "officially" drop registered-for courses by a deadline would also result in full financial liability for those courses "regardless of whether or not [the student had] attended [them]."

As stated in the FOA, students were required to pay several mandatory fees per semester in addition to tuition. These included an athletic and recreation fee to support recreational and intramural sports programs, campus fitness centers, and gyms; a capital improvement fee; a student government fee to fund "programming that enhances the intellectual, cultural, and personal growth of students . . . [and] works to develop students' leadership skills"; and a University Center fee to fund student programs, computer lab software, and student staff salaries.

The Spring 2020 semester at Kean began on January 21, 2020, and was scheduled to end on May 13, 2020. Spring break began on March 9, 2020, and classes were set to resume on March 16. However, on March 10, 2020, Kean announced that because of the COVID-19 pandemic and the Governor's EOs, all classes would be held remotely beginning March 16. Classes during the

rest of the semester were conducted online. Kean did not refund any part of the tuition paid by students for the semester.

Plaintiffs asserted that by offering some specifically all-online degree programs, Kean had "recognized and admitted the inherent difference between its in-person and online products." They noted the tuition and fees for in-person degree programs at Kean were higher than those for its online programs and for programs at "other online institutions."

The actions filed against Kean were consolidated. Kean moved to dismiss the complaints for failure to state a claim. Kean argued that plaintiffs' claims were barred by the EHPA, which it contended immunized State universities from all suits related to actions taken in response to the pandemic. Kean also argued that the complaint should be dismissed because it had agreed to provide educational services generally, not specifically in-person classes, and thus did not breach any enforceable agreement by changing to an online format to comply with the EOs. Kean noted it had refunded housing and dining fees to students for the Spring 2020 semester, and averred plaintiffs had not identified any contract provision entitling them to a tuition refund "if a governmental order precludes students from congregating on campus."

Plaintiffs argued that Kean "charged its students money for an in-person learning experience and then failed to deliver that experience and kept the

money anyway." They agreed that Kean was required to suspend in-person classes, but asserted that the EOs "did not order Kean University to not issue refunds to its students." Plaintiffs argued that there was "a clear implied contract for in-person learning" between them and Kean, evidenced by "the course catalogs, the curriculum posted online, and in student bulletins and things of that sort" which described on-campus locations for classes. They contended that the EHPA's immunity provision does not cover suits claiming losses of money due to breaches of contract.

The trial court found that Kean's action to move to online instruction was "undoubtedly an act in connection with a public health emergency" that was "within the scope of the authority granted under [the] EHPA" and was immune from suit. It found Kean "continued to provide educational services, which is what [it] had contracted to do, through online instruction," allowing students to receive credit for their courses and "complete their degree[s] on time." The court dismissed the amended complaint with prejudice.

Claims Against Montclair State University

Montclair is a public university with over 21,000 students. When choosing classes via the university's course catalog, students may select "online programs" if desired, for some courses. Each registering Montclair

student was required to agree to the terms and conditions set forth in a document titled "Financial Agreement" (FA).

The FA stated that upon registration for courses, a student accepted "full responsibility to pay all tuition, fees and other associated costs assessed" by a scheduled due date. The FA provided that if a student failed to withdraw from a course prior to a set deadline, he or she would be "responsible for paying all or a portion of the charges" for that course "in accordance with the published refund schedule." In addition to tuition, Montclair students were required to pay mandatory fees, including a "Student Government Association Fee" to support the university's Student Government Association and other student organizations on campus, and a "Student Services Fee" to support the campus's recreation center and student center. The FA stated that it was the entire agreement between the student and Montclair "with respect to [his or her] payment and enrollment obligations."

Montclair's Spring 2020 semester began on January 21, 2020, and was scheduled to conclude on May 12. Spring Break began on March 9, and was intended to end on March 15. However, on March 10, Montclair announced through a news release that because of the COVID-19 pandemic, the break would be extended through March 22 and classes would resume on March 23 in a remote, online format. Classes were conducted online for the remainder

of the Spring semester, which was not lengthened to account for the week of instruction lost through the extension of Spring Break. Montclair did not refund any tuition or fees paid by students for the semester.

In his amended complaint, Keyes alleged that on its website, Montclair had "market[ed]" an "on-campus experience," including participation in sports teams and recreational activities and events, as a benefit of enrolling there. Plaintiff asserted that because Montclair closed its campus and moved all instruction online, the university "did not deliver the educational services, facilities, access and/or opportunities that [he] and the putative class contracted and paid for." More specifically, Keyes alleged that the filmmaking major he pursued "relies extensively on in-person instruction, meaningful student presentations, peer collaboration, and access to video technology facilities, including filmmaking equipment," and that after March 23, 2020, he "only had access to minimum online education options."

Keyes alleged that the remote education he received was "in no way the equivalent of the in-person education" he and other putative class members "contracted and paid for," and that he had chosen to "[pay] a higher price for an in-person education" at Montclair than he would have paid at an online higher education institution because he believed he would receive the greater benefits of such.

Montclair filed a motion to dismiss the complaint for failure to state a claim upon which relief can be granted. Montclair argued the EHPA immunized it from suits related to actions in response to the pandemic. It also asserted that it had breached no contract with plaintiff, because there was "no contractual provision that address[ed] what might occur when a public health emergency that is unprecedented makes it unsafe for students and faculty to come to campus and when governmental orders explicitly require them to stay at home for their protection." Montclair contended that it "found a way to continue on providing education to [its] students," and that thus did not breach any existing contract term.

Keyes argued that the EOs "did not order Montclair to keep the money that had been prepaid for an in-person education," and that it was inequitable to force students to "bear the cost of the pandemic." He asserted that "various university publications, including the course catalog and bulletins of that sort," made it "clear" that Montclair offered in-person classes, and that students who registered for those classes intended to take them on campus. Keyes argued that Montclair also offered online courses of study, which evidenced that other classes were meant to be held in-person. He also argued that the EHPA did not bar his suit, contending that the statute should not be read to immunize against breach of contract claims.

The trial court found that the EHPA's immunity, which "shall be liberally construed," extended to lawsuits like plaintiff's, which alleged "a loss of property, albeit essentially monetary," because of an entity's actions in response to a public health emergency. It did not reach the issues of the nature of Montclair's contract with plaintiff or whether the university breached that contract. The court issued an order dismissing Keyes' complaint with prejudice under Rule 4:6-2(e).

These appeals followed. On appeal, plaintiffs argue:

> THE TRIAL COURT ERRED BY DISMISSING PLAINTIFFS' COMPLAINTS ON THE BASIS OF THE EMERGENCY HEALTH POWERS ACT, N.J.S.A. 26:13-19.

Plaintiffs contend the trial courts erred by dismissing their complaints with prejudice under Rule 4:6-2(e). The rule states that a defendant may move to dismiss the complaint for "failure to state a claim upon which relief can be granted." In reviewing this type of motion, the court's inquiry is "limited to examining the legal sufficiency of the facts alleged on the face of the complaint" to determine "whether a cause of action is 'suggested' by" those facts. Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989). The court must search the complaint "in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim . . . ." Di Cristofaro v. Laurel Grove

Mem'l Park, 43 N.J. Super. 244, 252 (App. Div. 1957). The plaintiff's burden when defending against a Rule 4:6-2(e) motion is "not to prove the case" but only to show that the complaint contains "allegations, which, if proven, would constitute a valid cause of action." Leon v. Rite Aid Corp., 340 N.J. Super. 462, 472 (App. Div. 2001).

Our review of a trial court's ruling on a motion to dismiss is de novo, without deference to the judge's legal conclusions. Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 108 (2019). Like the trial court, a reviewing court must "pass no judgment on the truth of the facts alleged" in the complaint and must "accept them as fact only for the purpose of reviewing the motion to dismiss." Banco Popular N. Am. v. Gandi, 184 N.J. 161, 166 (2005). Although the review of the factual allegations of a complaint on a motion to dismiss is to be "undertaken with a generous and hospitable approach," Printing Mart, 116 N.J. at 746, "[a] pleading should be dismissed if it states no basis for relief and discovery would not provide one," Rezem Fam. Assocs., LP v. Borough of Millstone, 423 N.J. Super. 103, 113 (App. Div. 2011).

Plaintiffs contend N.J.S.A. 26:13-19 immunizes public entities from liability for "injuries," and that the statute's definition of that term encompasses only tort liability, not contract claims, citing Gaviria v. Lincoln

Educ. Servs. Corp., 547 F. Supp. 3d 450 (D.N.J. 2021). They also argue that courts must strive to read statutes in a manner that does not implicate constitutional concerns, and that the trial courts' interpretation of the EHPA puts the statute in conflict with "constitutional prohibitions against the impairment of contracts."

Because the interpretation of a statute is a question of law, a de novo standard of review applies on appeal. McGovern v. Rutgers, 211 N.J. 94, 107-08 (2012). The overriding goal of statutory interpretation is for the court to "determine as best [it] can the intent of the Legislature, and to give effect to that intent." State v. Robinson, 217 N.J. 594, 604 (2014). To ascertain legislative intent, the court must "begin with the statute's plain language and give terms their ordinary meaning." State v. S.B., 230 N.J. 62, 68 (2017). It may also "draw inferences based on the statute's overall structure and composition," to "construe the meaning of the Legislature's selected words." Ibid. "If the Legislature's intent is clear on the face of the statute, then the 'interpretative process is over.'" Ibid. (quoting State v. Hupka, 203 N.J. 222, 232 (2010)). However, if the statute's language is ambiguous, the court may "consider extrinsic interpretative aids, including legislative history." Ibid. Ultimately, statutory language "should be . . . construed in a common-sense

manner," and in a way that will not render any part of the enactment "superfluous." State in Interest of K.O., 217 N.J. 83, 91 (2014).

N.J.S.A. 1:1-1 provides that words and phrases in statutes must "be given their generally accepted meaning, according to the approved usage of the language," unless this meaning is "inconsistent with the manifest intent of the legislature or unless another or different meaning is expressly indicated." If the Legislature has set forth a specific definition of a term in a statute, "the courts are bound by that definition." Febbi v. Bd. of Rev., 35 N.J. 601, 606 (1961).

Relevant here, N.J.S.A. 1:1-2 states that the term "property," "unless restricted or limited by the context to either real or personal property, includes both real and personal property." "Personal property," in turn, includes "rights and credits, moneys and effects, evidences of debt, [and] choses in action." N.J.S.A. 1:1-2.

The EHPA grants the Governor power to declare a public health emergency in New Jersey, defined as "an occurrence or imminent threat of an occurrence that," in pertinent part, is caused by "the appearance of a novel . . . biological agent" such as a virus that poses a high probability of "a large number of deaths, illness, or injury," "a large number of serious or long-term impairments," or "a substantial future harm to a large number of people" in the

"affected population." N.J.S.A. 26:13-3; N.J.S.A. 26:13-2. The EHPA also confers upon the Commissioner of the Department of Health the authority to "coordinate all matters pertaining to the public health response" to such an emergency, including implementing "reasonable and necessary measures" to "prevent the transmission of infectious disease." N.J.S.A. 26:13-12.

The EHPA states that a public entity and its agents, officers, employees, servants and representatives "shall not be liable for an injury caused by any act or omission in connection with a public health emergency, or preparatory activities, that is within the scope of the authority granted under [the] Act, including any order, rule or regulation adopted pursuant thereto." N.J.S.A. 26:13-19(b)(1). However, an individual is not immune for an injury resulting from an act outside the granted authority or for "conduct that constitutes a crime, actual fraud, actual malice, gross negligence or willful misconduct." Ibid. "Injury" is defined as "death, injury to a person or damage to or loss of property." N.J.S.A. 26:13-19(a) (emphasis added). The EHPA does not define the term "property."

The immunities established under the EHPA are to be "liberally construed to carry out the purposes of" the Act, and apply to "all public health preparedness activities, including pre-event planning, drills or other public health preparedness efforts." N.J.S.A. 26:13-19(d). They are "in addition to,

and shall not limit or abrogate in any way, other statutory immunities, common law immunities, statutory conditions on maintaining a lawsuit . . . or other defenses available to those who participate in responding to, or preparing for, a public health emergency." Ibid.

As stated above, plaintiffs argue that the definition of "property" in N.J.S.A. 26:13-19(a) should not be interpreted to include money sought in a suit for breach of contract. This was the view taken by the District Court in Gaviria, 547 F. Supp. 3d at 453-54, in which a student sought partial reimbursement of his tuition and fees from his school, Lincoln Tech,[2] because of its transition to online classes in Spring 2020 in response to the COVID-19 pandemic and related EOs. There, the court found that "'property' is not normally understood to include money or damages." Id. at 456. The court noted New Jersey statutes that created causes of action "to recover 'loss of moneys or property,'"[3] finding this implied that the Legislature considers

---

[2] N.J.S.A. 26:13-19(c)(2) extends immunity from suit to "a person or private entity" that acts "pursuant to the exercise of the authority provided pursuant to [the EHPA], including any order, rule, or regulation adopted pursuant thereto."

[3] The District Court cited N.J.S.A. 2C:13-8.1(a), N.J.S.A. 2C:21-17.4(a), and N.J.S.A. 56:8-19, which permit civil actions by people who have suffered a "loss of moneys or property" due to a human trafficking offense, unauthorized use of personal identifying information, or fraud in sales or advertisements, respectively. As further examples, the Legislature has also used the phrase "money or property" when stating that the proceeds of illegal activities are

"money" and "property" to be two different things. Ibid. It reasoned that because the Legislature did not employ this "double-barreled terminology" in N.J.S.A. 26-13-19(a), it did not intend the term "injury" to include a loss of money. Id. at 456-57. The court thus concluded the EHPA did not immunize Lincoln Tech from suit. Id. at 457.

We are not persuaded or bound by the District Court's interpretation of N.J.S.A. 26:13-19(a).[4] Notably, Gaviria did not consider the definition of "property" found in N.J.S.A. 1:1-2.

Adopting plaintiffs' narrower interpretation of the immunity provided by the EHPA would ignore the fact that in the absence of a specific definition for "property" in a particular statute, the definition of that term found in N.J.S.A. 1:1-2 "shall" apply. See Shelton v. Restaurant.com, Inc., 214 N.J. 419, 430-31 (2013) (applying definition of "property" found in N.J.S.A. 1:1-2 because the statute in that case did not otherwise define the term). The definition of

---

subject to forfeiture in N.J.S.A. 2C:64-1(a)(4), and when providing for restitution to victims of racketeering offenses in N.J.S.A. 2C:41-1(a)(7).

[4] Under "basic principles of federalism," a district court ruling is not binding on this court, particularly where that ruling is not based on prior decisions by our Supreme Court. Pac. Emps. Ins. Co. v. Global Reinsurance Corp. of Am., 693 F.3d 417, 436 (3rd Cir. 2012). Moreover, "a federal court's decision on a question of New Jersey law is not binding on any court in this state." Pressler & Verniero, Current N.J. Court Rules, cmt. 3.5 on R. 1:36-3 (2023); accord Kavky v. Herbalife Int'l, 358 N.J. Super. 497, 501 (App. Div. 2003).

"property" found in N.J.S.A. 1:1-2 expressly includes money. Our courts have also long held that "personal property . . . does include money." Charlton v. Mitchell, 121 N.J.L. 285, 287 (1938). See also Pirie v. Chicago Title & Trust Co., 182 U.S. 438, 443 (1901) (interpreting the statutory term "transfers of property" to include "payments in money," and stating "[m]oney is certainly property"); Belmont Land Ass'n v. Garfield, 90 N.J.L. 394, 397 (1917) (stating that "money is property").

We conclude that a proper interpretation of N.J.S.A. 26:13-19 incorporates the definition of "property" found in N.J.S.A. 1:1-2, thereby extending the immunity afforded by the EHPA to public entities like Kean and Montclair against claims of breach of contract where the alleged breach occurred because those entities exercised powers and duties related to a public health emergency.

This interpretation of N.J.S.A. 26:13-19 is in keeping with the general principle that a "fundamental aspect" of a state's sovereignty is "freedom from suit by private citizens for money judgments absent the State's consent." Allen v. Fauver, 167 N.J. 69, 73-74 (2001). A state "may voluntarily waive its sovereign immunity," but "[a]n effective waiver requires 'a clear and unequivocal statement of the Legislature.'" Royster v. N.J. State Police, 227 N.J. 482, 494 (2017) (quoting Allen, 167 N.J. at 77). For example, New Jersey

has waived its immunity from certain types of claims under the Tort Claims Act, N.J.S.A. 59:1-1 to 12-3, and the Law Against Discrimination, N.J.S.A. 10:5-1 to -42. However, even under those statutes, the rule is "generally, immunity applies and 'liability is the exception.'" Greenway Dev. Co. v. Borough of Paramus, 163 N.J. 546, 552 (2000) (quoting Fleuhr v. City of Cape May, 159 N.J. 532, 539 (1999)).

In the case of the EHPA, the immunity granted to entities related to public health emergency preparedness and response actions is to be "liberally construed." N.J.S.A. 26:13-19(d). This is clearly not an "unequivocal statement" waiving the State's immunity. Royster, 227 N.J. at 494. Further, grants of executive authority "must be construed to accomplish the Legislature's purpose," particularly when a statute is intended "to protect the public health, safety and welfare, especially during emergencies." Worthington v. Fauver, 88 N.J. 183, 194 (1982). Kean and Monmouth took actions in response to the COVID-19 pandemic and in compliance with EOs issued pursuant to the Governor's powers under the EHPA. Permitting plaintiffs to recover damages related to those actions would run counter to the Legislature's purpose in granting authority to the executive branch to take such actions to thwart the dangers posed by the COVID-19 pandemic. We find no

basis to frustrate the Legislature's intent to "liberally construe[]" N.J.S.A. 26:13-19 by adopting plaintiffs' strained interpretation of "property."

Plaintiffs further argue that the trial court's reading of the EHPA conflicts with the constitutional prohibitions against the impairment of contracts. We recognize that under the doctrine of constitutional avoidance, "when a statute is susceptible to two reasonable interpretations, one constitutional and one not," courts assume the Legislature would want the courts to construe it "in a way that conforms to the Constitution." State v. Pomianek, 221 N.J. 66, 90-91 (2015). The Federal and State Constitutions prohibit the passage of laws impairing the obligation of contracts. U.S. Const. art. I, § 10, cl. 1; N.J. Const. art. IV, § 7, ¶ 3; Burgos v. State, 222 N.J. 175, 193 (2015). "Legislation unconstitutionally impairs a contract when it (1) 'substantially impair[s] a contractual relationship,' (2) 'lack[s] a significant and legitimate public purpose,' and (3) is 'based upon unreasonable conditions and . . . unrelated to appropriate governmental objectives.'" Farmers Mut. Fire Ins. Co. of Salem v. N.J. Prop.-Liab. Ins. Guar. Ass'n, 215 N.J. 522, 546-47 (2013) (quoting State Farm Mut. Auto. Ins. Co. v. State, 124 N.J. 32, 64 (1991)).

Not every statutory modification of a contractual promise constitutes an unconstitutional impairment of contracts. U.S. Trust Co. v. New Jersey, 431 U.S. 1, 16 (1977). For example, the State has a sovereign right to protect the

general welfare of the people. Ibid. It thus "must possess broad power to adopt general regulatory measures without being concerned that private contracts will be impaired, or even destroyed, as a result." Id. at 22. Nevertheless, "private contracts are not subject to unlimited modification" by statute. Ibid. "Legislation adjusting the rights and responsibilities of contracting parties must be upon reasonable conditions and of a character appropriate to the public purpose justifying its adoption." Ibid.

We conclude the immunity afforded by the EHPA does not conflict with the State or Federal Constitutions, as the statute is intended to promote the general health and welfare of New Jersey residents, employees, students, and visitors, thus giving it a "significant and legitimate public purpose." Farmers, 215 N.J. at 546-47. Immunizing public entities from liability related to their actions in a statewide public health emergency is a key part of the legislative scheme, as it allows these entities to act quickly, efficiently, and fully to prepare for and react to such circumstances without fear of litigation consequences. Notably, plaintiffs do not contend the actions taken by Kean or Montclair in transitioning to total online instruction were unreasonable or unnecessary.

Because we hold that Kean and Montclair are immune from damages for transitioning to total online instruction rather than an in-person, on-campus

education experience during the COVID-19 public health emergency, we do not reach the issue whether they breached their contracts with plaintiffs, were unjustly enriched, engaged in conversion, or benefitted from money had and received.

The trial courts properly dismissed plaintiffs' complaints with prejudice under Rule 4:6-2(e), because "the factual allegations are palpably insufficient to support a claim upon which relief can be granted," Rieder v. State, 221 N.J. Super. 547, 552 (App. Div. 1987), "and discovery will not give rise to" one, Dimitrakopoulos, 237 N.J. at 107.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

CLERK OF THE APPELLATE DIVISION