NOT TO BE PUBLISHED WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

STEVEN POSTORINO Plaintiff, v. **RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY, COLIN A. POWERS, CHAISON HARRIS, ABC CORPS 1-100 (OWNERS OF REAL PROPERTY), JOHN DOES 1-100 (OWNERS OF REAL PROPERTY), JACK DOES 1-100 (RUTGERS EMPLOYEES OR OFFICIALS), JANE DOES 1-100** Defendant(s).	SUPERIOR COURT OF NEW JERSEY ESSEX VICINAGE LAW DIVISION, CIVIL PART DOCKET NO.: ESX-L-007641-19

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PETRILLO, J.S.C.

INTRODUCTION

This matter comes before the Court on motion by Defendant Rutgers, The State University of New Jersey ("Rutgers" or "the University"), seeking summary judgment for dismissal of all claims asserted by Plaintiff, Steven Postorino ("Plaintiff"), pursuant to R. 4:46-2. Having reviewed the moving submissions, statements of undisputed facts, reply submissions, and all attached exhibits, and

having considered argument, the Court **GRANTS** Rutgers' motion for summary judgment.

FACTUAL AND PROCEDURAL HISTORY

Plaintiff, seventeen years old at the time of the incident at issue, visited the Rutgers Newark campus on October 29, 2017, as the invited guest of then-student Colin A. Powers ("Powers"). Plaintiff intended to visit Powers in Powers' University Square dormitory apartment and attend Halloween parties in Newark. Def. SUMF ¶¶ 21-22. Plaintiff signed into University Square at approximately 12:02 a.m. after providing valid identification to security staff at the front desk. Id. ¶¶ 27–29. Plaintiff, Powers, and a friend, Caroline McGarry, entered Powers' private apartment within University Square, where Plaintiff voluntarily consumed multiple alcoholic drinks. Id. ¶¶ 32, 37; Pl. Dep. T90:13–91:17.

Plaintiff and Powers left University Square at approximately 12:20 a.m. Def. SUMF ¶ 45, Ex. G. They attended parties at two different off-campus, privately-owned residences referred to as the "soccer house" (Burnet Street) and the "baseball house" (James Street), and both consumed additional alcohol. Def. SUMF ¶¶ 48–58. Rutgers has never owned, managed, leased, or otherwise controlled these properties. Id. ¶¶ 51, 57.

As Plaintiff and Powers walked back to University Square after leaving the "baseball house," Powers assaulted Plaintiff on a Newark public street at approximately 1:24 AM. Id. ¶¶ 60–61; Powers Dep. T64:16–23; Ex. K. Powers was

arrested by Rutgers University Police, pleaded guilty to aggravated assault, and sentenced to probation, community service, and a fine. Def. SUMF ¶¶ 62–63; Powers Dep. T116:10–18.

Rutgers is organized as a non-profit educational institution organized under N.J.S.A. 18A:65-1 et seq., and maintains a Code of Student Conduct, a Guide to Residence Life, and Resident Assistant policies which expressly prohibit underage drinking and consumption of alcohol by persons over twenty-one in the presence of persons under twenty-one other than roommates. Def. SUMF ¶¶ 64–70. The Guide to Residence Life also required students to be responsible for the behavior of their guests. Def. SUMF ¶ 68. Plaintiff's Complaint alleges that Rutgers negligently permitted Plaintiff's underage drinking on campus, failed to supervise staff/assistants, failed to enforce policies, and failed to provide adequate security and protection.

Rutgers now moves for summary judgment arguing:

(1) No legal duty existed to protect Plaintiff from the intentional criminal acts of another student under these circumstances;

(2) Any such acts were not foreseeable as a matter of law;

(3) Plaintiff cannot establish causation/proximate cause; and

(4) All claims are barred under the New Jersey Tort Claims Act ("TCA") and the Charitable Immunity Act ("CIA").

LEGAL STANDARD

Summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c); Brill v. Guardian Life Ins., 142 N.J. 520, 528-29 (1995).

The moving party bears the initial burden of identifying undisputed material facts and showing entitlement to judgment. Judson v. Peoples Bank & Tr. Co. of Westfield, 17 N.J. 67, 74 (1954). The opposing party must, by competent proofs, set forth specific facts showing that there is a genuine issue for trial. Brill, 142 N.J. at 529-30. Credibility determinations are the province of the jury, but "bare conclusory assertions" without factual support are insufficient to defeat summary judgment. Brae Asset Fund L.P. v. Newman, 327 N.J. Super. 129, 134 (App. Div. 1999).

I. DUTY: NO SPECIAL RELATIONSHIP OR LEGAL DUTY OWED BY RUTGERS

A. Existence of a Legal Duty: General Principles

A threshold element of a negligence claim is the existence of a legal duty. The question of whether defendant is under any responsibility to exercise care for the benefit of the plaintiff is a question of law to be decided by the court. Strachan v. John F. Kennedy Mem'l Hosp., 109 N.J. 523, 529 (1988); Robinson v. Vivirito, 217 N.J. 199, 208 (2014). New Jersey case law requires courts, when analyzing "duty in fact," to weigh "the relationship of the parties, the nature of the risk, and the public

interest in the proposed solution." Goldberg v. Hous. Auth. of Newark, 38 N.J. 578, 583 (1962). Duty arises out of a relationship "that in right reason and essential justice enjoins the protection of the one by the other against what the law by common consent deems an unreasonable risk of harm, such as is reasonably foreseeable." Wytupek v. Camden, 25 N.J. 450, 461 (1957).

In New Jersey, no duty exists to control the conduct of, or protect another from, a third party's criminal acts, absent a "special relationship" or circumstances creating such a responsibility. Champion v. Dunfee, 398 N.J. Super. 112, 121-22 (App. Div. 2008) (collecting authorities); Tormo v. Yormark, 398 F. Supp. 1159, 1170 (D.N.J. 1975) (also collecting authorities). The Restatement (Second) of Torts § 314A (A.L.I. 1965) recognizes such special relationships only in limited contexts such as common carriers, innkeepers, employers, and custodians; special relationships do not generally include a university-student (or university-guest) relationship.

In the instant case, Plaintiff was not a Rutgers student, but a minor guest of a Rutgers student. He was lawfully signed into University Square, was present for under twenty minutes, and consumed alcohol outside the presence of Rutgers staff. Def. SUMF ¶¶ 27–45. There is no evidence that Rutgers supplied, served, or was aware of alcohol use Id. ¶ 41; Powers Dep. T43:14–44:4.

B. Case Law on University-Student/Guest Relationships

Authority in New Jersey and nationwide reject imposing a generalized duty on universities to protect students (or guests) from the voluntary or criminal acts of others, particularly in the context of student drinking and off-campus activities.

In Bradshaw v. Rawlings, 612 F. 2d 135 (3d Cir. 1979), a student was injured in a car accident returning from a university event at which alcohol was provided and consumed, often by those underage. The Third Circuit held that "[t]he modern American college is not an insurer of the safety of its students." Id. at 138.

The court rejected a finding of "special relationship" between college and student that would give rise to a custodial duty analogous to that owed by a parent. Id. at 139-40 ("At one time, exercising their rights and duties [i]n loco parentis, colleges were able to impose strict regulations. But today students vigorously claim the right to define and regulate their own lives."). See also Guest v. Hansen, 603 F.3d 15, 21 (2d Cir. 2010) (university does not act in loco parentis); Freeman v. Busch, 349 F.3d 582, 586 (8th Cir. 2003) (college does not have special relationship with students, such duty constitutes "broad and unprecedented expansion" of duty); Campbell v. Bd. of Trs. of Wabash College, 495 N.E.2d 227, 233 (Ind. App. 1986) (finding "[c]olleges and fraternities are not expected to assume a role anything akin to in loco parentis or a general insurer" applied to guest injured in car accident caused by intoxicated student); Eiseman v. State, 70 N.Y.2d 175 (1987) (no duty of colleges to shield from dangerous, off-campus activities of other students).

Plaintiff's claims that Rutgers breached a duty by failing to supervise or test for alcohol in private apartments, or review guests more stringently, would require Rutgers to search guests for contraband, separate them from each other, or monitor their private social activities. Neither law nor precedent support that intrusion. As discussed in Bradshaw, 612 F.2d at 139-40, "[r]egulation by the college of student life on and off campus has become limited," and college students hold expanded privacy rights in their college life. A duty to enforce an alcohol policy more strictly would impose undue burdens on the freedom and privacy rights of resident college students, and a university with such a duty could, consequently, be liable for a risk, such as an assault, it did not create or exacerbate, nor could it readily abate.

Imposing liability for failing to prevent a spontaneous, off-campus assault of which Rutgers had no notice, right, nor opportunity to intervene, would expand university tort responsibility beyond recognized boundaries.

C. Rutgers Policies, Codes, and University Action

It is well-settled that the mere promulgation of student codes, guest policies, or alcohol restrictions does not create a tort duty to monitor or enforce such rules if the University does not affirmatively assume that role or take custody/control of the students or their guests. As Bradshaw, 612 F.2d at 142 explained, the fact that university policy prohibited underage drinking was not sufficient to create a duty as there was no affectation of supervision or control.

In Beach v. Univ. of Utah, 726 P.2d 413, 420 (Utah 1986), the Utah Supreme Court declined to impose a duty based on a university alcohol policy, observing that "[a] college regulation that essentially tracks a state law and prohibits conduct that to students under twenty-one is already prohibited by state law, does not, in our view, indicate that a college voluntarily assumed a custodial relationship with its students [for tort analysis purposes]." In Allen v. Rutgers, The State Univ. of N.J., 216 N.J. Super. 189, 194 (App. Div. 1987), the Appellate Division was unpersuaded by the plaintiff's argument that "anti-alcohol policies of [a] university are similar in effect to a regulation governing a licensee or a pertinent common law standard of care and created a duty to protect persons . . . . including [] inebriates, from possible dangerous reactions to the consumption of alcoholic beverages . . . ." Instead, the Court found no duty to protect a patron from results of his voluntary intoxication. Id. at 196.

In the present case, Rutgers' Code of Student Conduct expressly prohibited underage drinking and required guests to be signed in and remain the responsibility of the hosting student. Def. SUMF ¶¶ 64–69. Rutgers' Code and policies, which prohibit underage drinking and require supervision of guests do not transform the university into an insurer against student or guest conduct. The record establishes no violation or lax enforcement that could be said to have caused Plaintiff's assault or to have created any duty.

D. Plaintiff's Status as Non-Student Guest and the Absence of a Special Relationship

Even to the extent some cases have discussed potential "special relationships," courts have been clear that the status of "guest," as opposed to enrolled student, is an even weaker case for extending the umbrella of university responsibility. As the Eighth Circuit stated in Freeman, 349 F.3d at 586, for a college's duty to extend to guests of its students would constitute "a broad and unprecedented expansion of duty."

No facts in the present record establish that Rutgers had custody, control, occasion, or reason to monitor Plaintiff's conduct beyond that of his host; nor does Plaintiff allege he was compelled or required to drink, or that Rutgers encouraged, facilitated, or had actual notice of the drinking. Plaintiff's own testimony indicates the contrary, Pl. Dep. T90:13–94:19, T95:2–4.

"Creation of a special relationship between a college and a student's guest would result in a broad and unprecedented expansion of duty" and is not justified on these facts. Freeman, 349 F. 3d at 588. To impose liability on Rutgers for failing to prevent a private, off-campus assault by a student—of whose criminal propensity, intoxication, or altercation it had no notice and no opportunity to intervene—would be legally and practicably untenable.

Conclusion – Duty

The record demonstrates no duty owed by Rutgers to Plaintiff to protect him from the voluntary conduct or off-campus criminal acts of students under these circumstances. Plaintiff was neither a student himself nor under Rutgers' custody or ongoing control; his actions and injuries arose in private settings unreachable by university regulation or realistic supervision. There is no precedent or policy basis to impose a custodial or insurer-type role on Rutgers as to the private, voluntary social interactions of students or their guests, particularly when unknown to the University.

II. FORESEEABILILTY OF HARM AND CAUSATION

A. Foreseeability: General Principles

Where a duty is recognized, a defendant may only be liable for harm that is foreseeable in light of the relationship, the risk, and the circumstances. Hopkins v. Fox & Lazo Realtors, 132 N.J. 426, 439 (1993). See also Hill v. Yaskin, 75 N.J. 139, 1 44 (1977). The relevant analysis centers on the defendant's knowledge of risk, relationship of the parties, and public policy. Griesenbeck ex rel. Kuttner v. Walker, 199 N.J. Super. 132, 137 (App. Div. 1985). See also Hill, 75 N.J. at 144; Hopkins, 132 N.J. at 439. Foreseeability must be based on "probable and predictable" events, not merely possible events. Butler v. Acme Mkts., 89 N.J. 270, 279 (1982).

B. Evidence in the Record

The current record is insufficient to establish Rutgers' knowledge or provide a basis for the foreseeability of Powers' actions. The spontaneous assault on a public Newark street was an unforeseeable event, and there is no evidence that Rutgers could have reasonably predicted or prevented Powers' acts.

There are no facts in the record showing Rutgers was aware of or could predict the criminal propensities of Powers toward Plaintiff. The incident did not arise on campus property, nor did it follow from any known or reported dispute in the dormitory. No noise complaints were reported; Plaintiff was not visibly intoxicated when leaving University Square; and there was no altercation between Powers and Plaintiff prior to the off-campus assault. Def. SUMF ¶¶ 43–47, 54, 61.

In Griesenbeck, 199 N.J. Super. at 138-39, a social host context, the court refused to impose a duty on parents for failing to foresee that their intoxicated adult daughter would inadvertently harm her own child at their home. Imposing a duty on Rutgers to prevent unpredictable, off-campus criminal acts would create "unforeseeable and indeterminable risks" inconsistent with fair public policy. Id. at 139.

Nothing in Rutgers' relationship to Plaintiff or Powers would suggest it was likely or even reasonably possible that a criminal assault by Powers would ensue hours after Plaintiff signed in to University Square, only to leave a short time later. With no prior notice or history, Rutgers cannot be liable for wholly unforeseeable,

private criminal conduct of a spontaneous nature unconnected to any university event or knowledge.

C. Proximate Cause and Superseding or Intervening Criminal Acts

Proximate cause exists only if the alleged negligent conduct "in the natural and continuous sequence, unbroken by an efficient intervening cause, produces the result complained of . . . ." Townsend v. Pierre, 221 N.J. 36, 51 (2015). A superseding, intervening cause breaks the chain of causation. See Cruz-Mendez v. ISU Ins. Servs., 156 N.J. 556 (1999) (holding that an unforeseeable intervening cause, such as plaintiff's actions in modifying and igniting a firework, can break the chain of causation, but foreseeable intervening causes do not relieve liability); Caputzal v. Lindsay Co., 48 N.J. 69, 76–80 (1966) (heart attack caused by fright at discolored water was an extraordinary and unforeseeable superseding cause); Restatement (Second) Torts § 440 cmt. b. (A.L.I. 1965). Regardless, if a negligent act was a substantial factor in bringing an injury, "a foreseeable intervening cause or one which was the normal incident of the risk created does not relieve the tortfeasor of liability." Polyard v. Terry,160 N.J. Super. 497, 511 (1978).

The record demonstrates a lack of causal connection between Plaintiff's alleged alcohol use in University Square and the subsequent off-campus assault. Powers' criminal attack constitutes a superseding, intervening cause, breaking the chain of causation. Moreover, Plaintiff's own drinking, both at the dorm and at off-campus parties, was not shown in any evidence to be a substantial factor in causing

the subsequent assault. Rutgers had no knowledge or reasonable ability to anticipate, prevent, or control Powers' conduct after he left campus.

Plaintiff's opposition points to Powers' own statements as to whether the assault would have happened had they not been drinking alcohol, but personal speculation by the assailant cannot establish proximate cause as a matter of law, especially where there is no evidence that Rutgers took or failed to take any action causally connected to the assault.

III. IMMUNITIES UNDER THE NEW JERSEY TORT CLAIMS ACT

Rutgers asserts immunity under the New Jersey Tort Claims Act ("TCA"), N.J.S.A. 59:1-1 et seq., which confers broad protections against tort liability for public entities except in narrow, statutorily defined circumstances. The Court addresses Plaintiff's asserted theories of liability and Rutgers' claimed immunities in detail below.[1]

A. Legal Framework

At the outset, the TCA establishes as a foundational rule: "[A] public entity is not liable for an injury, whether such injury arises out of an act or omission of the

[1] At oral argument, the Court inquired at some length as to why general negligence principles should even be considered given the basis of Plaintiff's claims and the broad protections provided to Rutgers by the TCA. In essence, Rutgers took the position that it did in an abundance of caution. The Court expressed their reservations about the manner in which the arguments and opposition were presented. Plaintiff and Rutgers declined the Court's invitation for further briefing noting on the record satisfaction with the motion, opposition and record as presently constituted.

public entity or a public employee or any other person," except where liability is imposed by a specific statutory provision. N.J.S.A. 59:2-1.

While drafting the TCA, a paramount concern of the Legislature was "that a statute imposing general liability, limited only by specified statutory immunities, would provide public entities with little basis on which to budget for the payment of claims and judgments for damages." Rochinsky v. State, Dep't of Transp., 110 N.J. 399, 403 (1988). The TCA is to be strictly applied, and the "dominant theme" of the statute is immunity, with liability only arising under specifically enumerated exceptions. See Weiss v. N.J. Transit, 128 N.J. 376, 383 (1992). Plaintiff cites the existence of several possible theories against Rutgers:

(1) "dangerous condition" liability;

(2) negligent provision of security; and

(3) failure to enforce law, policy, or provide adequate protection and supervision.

For each, the Court finds that the TCA bars Plaintiff's claims as a matter of law.

1. "Dangerous Condition" of Public Property – N.J.S.A. 59:42-2

A public entity is liable for injuries caused by a dangerous condition of its property only if the condition creates "a substantial risk of injury when such property is used with due care in a manner in which it is reasonably foreseeable that it will be used," and certain additional requirements are met. N.J.S.A. 59:4-1, 4-2.

New Jersey courts hold that the mere presence or conduct of a third party on government property, including actors with criminal intent, does not constitute a dangerous condition as defined by the statute. See Rodriguez v. N.J. Sports & Exposition Auth., 193 N.J. Super. 39, 44 (App. Div. 1983), certif. denied, 96 N.J. 291 (1984) ("the mere presence . . . . of persons with criminal intent . . . . does not constitute a dangerous condition within the meaning of the [TCA] so as to impose liability").

The criminal assault by Powers occurred on a Newark public street, not on property owned, leased, or controlled by Rutgers, and plaintiff's injury was not caused by any physical condition or defect of Rutgers' premises, but by a third-party's intentional criminal conduct. Even if the Court were to construe the "consumption of alcohol" within a private student apartment as a potential "dangerous condition," this would fail the statutory requirement that the dangerous condition itself, rather than third-party acts, be the source of risk and injury. See Id. (presence of persons with criminal intent or purpose does not constitute a "dangerous condition").

N.J.S.A. 59:4-2 liability for dangerous conditions of public property requires that the condition exist on Rutgers property. The assault on Plaintiff took place on public property in Newark, not University property, and was committed by a third party. Campus regulation and policy cannot transform such third-party criminal

conduct occurring off campus into a compensable "dangerous condition" under the Act in this case.

2. Police/Security Immunity – N.J.S.A. 59:5-4

The TCA provides further, and categorical, immunity to public entities for alleged failures relating to police or security protection: "Neither a public entity nor a public employee is liable for failure to provide police protection service or, if police protection service is provided, for failure to provide sufficient police protection service." N.J.S.A. 59:5-4.

This immunity applies to claims based on both the absence and the alleged inadequacy of campus security staff, police, or similar protections. See Vanchieri v. N.J. Sports & Exposition Auth., 201 N.J. Super. 34, 42 (App. Div. 1985) (immunity for authority's failure to hire or maintain security); Setrin v. Glassboro State College, 136 N.J. Super. 329, 334–35 (App. Div. 1975) (university immune for claim that it failed to have sufficient police or guards at student sporting event).

Rutgers' residence life policies providing for Resident Assistants and twenty-four hour front-desk security staff, see Def. SUMF ¶¶ 16–19, reflect an exercise of judgment about the appropriate level of campus supervision. Even so, the TCA specifically precludes "liability for injuries and damages resulting from the failure to provide police protection or the failure to provide sufficient police protection." Rodriguez, 193 N.J. Super. at 42-43. Plaintiff's allegations concerning Rutgers'

failure to prevent the incident through more robust security presence, bag checks, or staff intervention cannot survive statutory immunity. The undisputed facts confirm:

- No Rutgers employee, Resident Assistant, or security staff knew or reasonably could have known of Plaintiff's or Powers' alcohol consumption. Def. SUMF ¶ 41.
- All alleged drinking occurred privately; there were no complaints or "red flags" to prompt intervention. Def. SUMF ¶¶ 41, 44.
- No evidence exists that increased security could have prevented the off-campus, spontaneous assault.

A "public entity can determine with impunity whether to provide police protection service and, if provided, to what extent." Rodriguez, 193 N.J. Super. at 43. Plaintiff's claim based on alleged inadequacy of campus or residential security is barred by N.J.S.A. 59:5-4.

3. Failure to Enforce Laws or Policies – N.J.S.A. 59:2-4

The TCA grants public entities immunity for "any injury caused by adopting or failing to adopt a law or by failing to enforce any law." N.J.S.A. 59:2-4. This immunity extends to internal policies, rules, or regulations. See Garry v. Payne, 224 N.J. Super. 729, 732–33 (App. Div. 1988) (immunity for failure to enforce safety ordinances/regulations); Macaluso ex rel. Macaluso v. Knowles, 341 N.J. Super. 112, 117 (App. Div. 2001) (holding no TCA exception for "special relationship").

Regardless of whether an individual Rutgers employee or officer might have theoretically failed to enforce university guest or alcohol policies, Def. SUMF ¶¶ 64–70, the TCA bars any claim arising from alleged non-enforcement of those policies. Courts have consistently applied N.J.S.A. 59:2-4 to governmental failure to enforce, post, or maintain rules, as in Burroughs v. City of Atl. City, 234 N.J. Super. 208, 220 (App. Div. 1989), certif. denied, 117 N.J. 647 (1989) (city immune from liability for not enforcing no-diving regulations, where plaintiff was injured diving from boardwalk). The policy behind this immunity recognizes that governments and public institutions "should not have the duty to do everything that might be done" to prevent harm. N.J.S.A. 59:1-2. See also Task Force on Sovereign Immunity, N.J. Att'y Gen., Report (May 1972) (digitized and available to view at https://dspace.njstatelib.org/items/aaa8a661-267e-40fc-ad3c-5108ff957a04).

In the present case, Plaintiff's claims that Rutgers negligently failed to enforce its own, internal underage drinking, guest, or security policies, if accepted as true, are not actionable under the TCA.

Conclusion – TCA Immunities

The record and New Jersey law admit of no exception in which Rutgers could be liable to Plaintiff for either: (a) dangerous conditions of public property arising from criminal conduct, (b) alleged failure to provide or adequately staff security services, or (c) failure to enforce campus rules or laws relating to alcohol, safety, student guests, or otherwise.

The Tort Claims Act immunities of N.J.S.A. 59:2-1, 59:4-1, 59:4-2, 59:5-4, and 59:2-4, as thoroughly interpreted by New Jersey courts including Rodriguez, 193 N.J. Super. 39, Setrin, 136 N.J. Super. 329, Vanchieri, 201 N.J. Super. 34, Garry, 224 N.J. Super. 729, and Burroughs, 234 N.J. Super. 208, bar Plaintiff's claims against Rutgers as a matter of law.

IV. IMMUNITY UNDER THE NEW JERSEY CHARITABLE IMMUNITY ACT

Rutgers asserts that, as a nonprofit educational institution, it is immune from Plaintiff's negligence claims under the New Jersey Charitable Immunity Act ("CIA"), N.J.S.A. 2A:53A-7(a). The Court finds this defense, too, supports summary judgment for Rutgers.

A. Statutory Background and Analytical Framework

N.J.S.A. 2A:53A-7(a) provides in relevant part:

> No nonprofit corporation, society or association organized exclusively for religious, charitable or educational purposes . . . . shall . . . . be liable to respond in damages to any person who shall suffer damage from the negligence of any agent or servant of such corporation . . . . where such person is a beneficiary, to whatever degree, of the works of such nonprofit corporation.

Thus, to invoke immunity, the organization must show:

(1) It was formed for nonprofit purposes;

(2) It is organized exclusively for religious, charitable, or educational purposes;

(3) The organization was engaged in pursuit of its stated objectives at the time of the alleged injury; and

(4) The plaintiff was then a beneficiary "to whatever degree" of those objectives/works.

O'Connell v. State, 171 N.J. 484, 489 (2002); Graber v. Richard Stockton Coll. of N.J., 313 N.J. Super. 476, 480 (App. Div. 1998), certif. denied, 156 N.J. 409 (1998).

The CIA is to be "liberally construed so as to afford immunity . . . . in furtherance of the public policy for the protection of nonprofit corporations . . . . organized for . . . . charitable [and] educational . . . . purposes." N.J.S.A. 2A:53A-10.

B. Rutgers Satisfies the Elements for Immunity

Nonprofit, Educational Nature of Rutgers

Rutgers is a nonprofit entity, arranged under N.J.S.A. 18A:65-1 et seq., and is organized exclusively to provide educational services for the benefit of the public. Def. SUMF ¶ 1. Its nonprofit and educational character is established by statute and judicial decision. See Trs. of Rutgers Coll. v. Richman, 41 N.J. Super. 259, 283 (Ch. Div. 1956); Rutgers, The State Univ. of N.J. v. Piluso, 60 N.J. 142, 158 (1972).

Engaged in Educational Work at Time of Incident and in Pursuit of Stated Objective

"Educational objectives" is construed broadly, applying to diverse campus activities and programs. See Auerbach v. Jersey Wahoos Swim Club, 368 N.J. Super. 403, 412 (App. Div. 2004); Bloom v. Seton Hall Univ., 307 N.J. Super. 487, 492

(App. Div. 1998) (citations omitted) ("[T]he term 'educational' has been broadly interpreted and not limited to purely scholastic activities."); Graber, 313 N.J. Super. at 482 (citations omitted) ("qualifying organization does not lose its statutory immunity merely because it charges money for its services.").

At the time of the incident, Rutgers was fulfilling its educational mission by providing student housing, an integral part of the university experience. Providing dormitory services is a traditional function protected by charitable immunity, as it allows students opportunity to mature through "diverse forms of social interchange," a reasonable educational goal for a university. Orzech v. Fairleigh Dickinson Univ., 411 N.J. Super. 198, 207 (App. Div. 2009); Franco v. Fairleigh Dickinson Univ., 467 N.J. Super. 8, 35 (App. Div. 2021) (upholding Orzech, 411 N.J. Super. at 207 conclusion that dormitory services fulfills educational missions of universities).

Plaintiff as a Beneficiary Under the CIA

The New Jersey CIA, N.J.S.A. 2A:53A-7(a), provides immunity for non-profit, educational organizations from claims by "beneficiaries" of the organization's works. New Jersey law broadly interprets "beneficiary" to include those who derive a benefit "to whatever degree," including guests and visitors. See Auerbach, 368 N.J. Super. at 410; Orzech, 411 N.J. Super. at 205; Gray v. St. Cecilia's Sch., 217 N.J. Super. 492, 493 (App. Div. 1987). "[A p]laintiff need not have personally received a benefit, or have intended or understood the entity's goals." Auerbach, 368 N.J. Super. at 414. A plaintiff's purpose or motivation is irrelevant; the inquiry is

objective. See Peacock v. Burlington Cty. Hist. Soc'y, 95 N.J. Super. 205, 208–09 (App. Div.), certif. denied, 50 N.J. 290 (1967)).

The Appellate Division has reinforced that beneficiary status extends to individuals on campus, even if not a resident student, benefiting from the charitable and educational ambiance. See Franco, 467 N.J. Super. at 8 (commuter student spending night in dormitory; immunity applied); Orzech, 411 N.J. Super. 198, 207–08 (App. Div. 2009) (intoxicated student fell from dormitory window found beneficiary; campus residence life experience commensurate with educational objectives). Beneficiary guests outside of a university context has been thoroughly established by the Appellate Division. See Anasiewicz v. Sacred Heart Church, 74 N.J. Super. 532, 539–40 (App. Div.), certif. denied, 38 N.J. 305 (1962) (non-member guest at church wedding fell under immunity); Loder v. St. Thomas Greek Orthodox Church, 295 N.J. Super. 297 (App. Div. 1996) (parent found beneficiary of school even though presence only incidental to son's direct benefit); Gray, 217 N.J. Super. at 496–97 (festival attendee a beneficiary); Pomeroy v. Little League Baseball of Collingswood, 141 N.J. Super. 471 (App. Div. 1976) (youth baseball game spectator a beneficiary).

Here, Plaintiff was invited to campus by Powers, a student, signed in as a guest, and engaged briefly in the social and residential life Rutgers provided to its students. These facts meet and exceed "to whatever degree" for beneficiary status.

C. No Evidence of Willful, Reckless, or Grossly Negligent Conduct

Charitable immunity does not excuse reckless or grossly negligent conduct. N.J.S.A. 2A:53A-7; Kain v. Gloucester City, 436 N.J. Super. 466, 482 (App. Div. 2014) (gross negligence "commonly associated with egregious conduct").The record is devoid of competent evidence, nor does Plaintiff plead, that Rutgers (or any agent) engaged in willful, wanton or grossly negligent conduct.

The circumstances, as detailed above, show routine administration of campus life and no disturbing divergence from accepted standards or deliberate indifference. Plaintiff's attempt at the summary judgment stage to inject gross negligence or recklessness arguments must be disregarded. These allegations are not supported by evidence of record.

D. Extraterritorial Application and Adjacent Public Property

Even though Powers' assault occurred off university property, CIA immunity still applies. In Thomas v. Second Baptist Church, 337 N.J. Super. 173 (App. Div. 2001), the Appellate Division held that immunity applied where the plaintiff tripped and was injured on a public sidewalk in front of the defendant church's property.

In the present case, Plaintiff's status as a beneficiary does not evaporate merely because he was harmed while moving between or just beyond Rutgers facilities. As explained in Thomas, 337 N.J. Super. 173 (App. Div. 2001), a charitable institution may invoke CIA immunity when an injury occurs on public property adjoining the institution's premises.

Conclusion – Charitable Immunity

Rutgers possesses all hallmarks for CIA immunity: nonprofit character, educational purpose, pursuit of mission through residence life, and Plaintiff's status as beneficiary. There is neither a legal nor factual basis for any exception, and case law both in the university context and more broadly supports application of CIA immunity to guests and non-students engaged in covered activities.

Accordingly, the claims in Plaintiff's Complaint are barred in their entirety by the Charitable Immunity Act, and Rutgers is entitled to summary judgment.

V. CONCLUSION

No genuine disputes of material fact exist as to any relevant issue. All facts concerning Rutgers' lack of knowledge or involvement, Plaintiff's status, Powers' independent criminal conduct, and the location and circumstances of the assault are supported by the record. There is no evidence upon which a reasonable jury could find for Plaintiff as to any essential element of his claim. Additionally, there exists multiple statutory bans that are applicable here..

Summary judgment for Rutgers is therefore compelled under R. 4:46-2(c), Brill, 142 N.J. at 529, and Judson, 17 N.J. at 75.

For the foregoing reasons, Rutgers' motion for summary judgment is **GRANTED** in its entirety. Plaintiff's Complaint is dismissed with prejudice as to Defendant Rutgers, The State University of New Jersey.

A memorializing order will be filed simultaneously with this opinion.