SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3189-19
A-3193-19

VICTORIA VAZQUEZ, JORDON KLOTZ, SARAH MORROW, TIMOTHY MORROW, JOHN ARLIEVSKY, CASEY WICHMAN, KAYLA FREEDMAN, HANNAH STEELE, REBECCA KIRK, SAMUEL SCHEIBE, MORGEN ZWICHAROWSKI, CHARLES IBSEN, SARAH ENGEL, KELLY ZUZIC, WILLIAM LANDIS, JASON STEINER, ORRY WALTER, ANDREW CHOJNACKI, MADELYNN SHORES, GABE WOODS, ANTHONY PINKERTON, ANNA MATONE, KAITLYN NEWMAN, ABIGAIL FLANAGAN, MADISON MURPHY, CHLOE CROSBY, MICHAELA CAREY, LAURA MILLON, BRIAN MCCLARY, ELIZABETH BOYLE, MARY-KATE HOMETCHKO, CASSANDRA SUTTER, ANTHONY DUTKIEWICZ, KARINA BRUNO, EVAN DAVIS, GRACE RYKACZEWSKI, LILLIE JUDGE, JORDAN ALLEN, SARAH SWAHLON,

WILLIAM BUTRON, DAVID HELMER, GRACE AMODEO, KIRA PAUL, ROSEMARY GURAK, ELLIE SMOLYANINOVA, DEVON BARNES, MALLORY HAGEN, JOHN VANDEVERT, FRANCESCA FIORAVANTI, JOSHUA LISNER, MARISSA DEMARZO, JULIANNA MASSIELO, CHRISTINA HAN, DESTINY VELEZ, NATALIE ATKINSON, SAVANNAH BEALE-MCCONNELL, SUMMER RAE KUHNS, CHELSEA HOLBROOK, FRANCESCA BLISS, JORDAN MONGELL, JOHN ARLIEVSKY, ALEXANDER MILLER, MARCUS TIMPANE, JULIA COSTELLO, RICHARD SABER, HANNAH BROOMHALL, COLLEN GILGAN, JOCELYUN ALAM, AMIA LANGER, EMILY CHANT, and EMILY MCDONALD, on behalf of themselves and others similarly situated,

Plaintiffs-Appellants,

v.

RIDER UNIVERSITY,

Defendant-Respondent.

HOWARD MCMORRIS, JOSEPH BECK, CHARLES GOLDBERG, JONATHAN SLAWSON, CONSTANCE FEE, JAMIE FLACK,

CAROL JENKINS, ELEM ELY, JOEL PHILLIPS, JAY KAWARSKY, RON HEMMEL, SHARON SWEET, CHRISTIAN CAREY, STEFAN YOUNG, R. DOUGLAS HELVERING, CHARLES FREDERICK FRANTZ, ART TAYLOR, CAROL JEAN NICHOLSON, ELIZABETH SCHEIBER, JAMES JORDAN, and MICHAEL J. BROGAN,

Plaintiffs-Appellants,

v.

RIDER UNIVERSITY,

Defendant-Respondent,

and

MATTHEW J. PLATKIN, in his Official Capacity as Attorney General of New Jersey,

Defendant.

Argued May 16, 2022 – Decided June 29, 2023

Before Judges Accurso, Rose and Enright.

On appeal from the Superior Court of New Jersey, Chancery Division, Mercer County, Docket Nos. C-000069-18 and C-000080-19.

Bruce I. Afran argued the cause for appellants.

Angelo A. Stio III argued the cause for respondent (Troutman Pepper Hamilton Sanders LLP, attorneys; Angelo A. Stio III, of counsel and on the briefs).

The opinion of the court was delivered by

ACCURSO, J.A.D.

Plaintiffs in these now consolidated cases — students, faculty, former board members, alumni of and donors to Westminster Choir College — appeal from a March 2, 2020 General Equity order dismissing their complaints on motion against defendant Rider University seeking to prevent the sale of the Choir College or its relocation from Princeton to Rider's Lawrenceville campus.

Specifically, the trial court ruled plaintiffs lacked standing to enforce deeds gifting the land for the Princeton campus to the Choir College, as well as to enforce agreements between the Choir College and Princeton Theological Seminary, the Seminary and Rider, and the 1991 Agreement governing the merger of the Choir College into Rider; that claims premised on the Choir College being a charitable trust fail; former board, donor and alumni plaintiffs have no standing to pursue any claims against Rider in these actions, including the appointing of a receiver for Westminster; and while students and faculty have standing to contest the relocation of the Choir College under the common

law and the Nonprofit Corporation Act, N.J.S.A. 15A:1-1 to 16-2, their failure to allege Rider did so arbitrarily or in bad faith required dismissal of those claims; and, finally, that plaintiffs' claims for an accounting, reinstatement of the Westminster Choir College Corporation, and for declaratory judgment and injunctive relief are only claims for relief and fail to state causes of action on which such relief could be granted.

We affirm in all respects but two. We conclude a generous reading of the complaints filed by the Vazquez and the McMorris faculty plaintiffs reveals they allege Rider acted arbitrarily and in bad faith in first entering into an agreement to sell the Choir College to a Chinese construction company with no experience running a college, and when that fell through, announcing the abandonment of Westminster's conservatory campus in Princeton and the relocation of the Choir College to Rider's Lawrenceville campus, which lacks the facilities necessary for conservatory training of Westminster's students. We also conclude both the Vazquez and McMorris faculty plaintiffs may sue to enforce the obligations Rider specifically agreed would survive post-merger in the 1991 Merger Agreement. We thus vacate dismissal of those claims and remand to permit plaintiffs to pursue them in the trial court. We affirm the dismissal of all other claims in both cases.

The Vazquez plaintiffs are a group of seventy-one Westminster undergraduate and graduate students. The McMorris plaintiffs are Westminster faculty members, former board members, alumni, and donors to the Choir College. The claims in both cases are nearly identical. Both sets of plaintiffs were represented by the same lawyer in the trial court, and they filed the same brief in each appeal. We thus refer to the allegations of the complaints without distinguishing between them. Because the matter comes to us by way of appeals from motions to dismiss on the pleadings, we take the facts from the complaints, assume them to be true and present them here in the light most favorable to plaintiffs. See Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989).

Westminster Choir College is a storied, degree-granting conservatory with a significant focus on sacred music. It boasts a nearly thirty-acre campus in the heart of the Borough of Princeton, having "at least five major performing venues that are specially designed, both structurally and acoustically, for the highly specialized non-amplified choral, operatic and instrumental training that Westminster provides." It has one of the most modern choral training and rehearsal facilities in the United States in the Marion Buckelew Cullen Center, a 3,000-square-foot performance hall with

permanent built-in stands for more than 200 choral students, as well as much older structures such as the Bristol Chapel and the Playhouse, which have "intense historical connections in the orchestral, voice and choral settings," as many of the most noted American and European conductors, including Leonard Bernstein, Leopold Stokoski, Kurt Masur, Zubin Meta, James Levine and Arturo Tuscanni, rehearsed and performed there.

Westminster's Princeton campus also houses the Talbot Library, one of the largest and finest conservatory libraries in the United States. The campus boasts 150 specially designed "hardened" practice spaces to allow vocal and instrumental feedback for non-amplified performance; forty-five faculty studios, each with a grand piano; another one hundred pianos scattered across studios and practice spaces; and a collection of rare pipe organs "used in its religious educational mission and programs." Its nine choral performance groups are the core of Westminster's academic and professional training program. The Westminster Symphonic Choir, one of the world's leading choral ensembles, made up of juniors, seniors and graduate students, performs regularly under contract with the Philadelphia Orchestra and the New York Philharmonic and has performed and recorded with many other major orchestras here and in Europe.

The Choir College was founded in 1920 by John Finley Williamson as the Westminster Choir of the Westminster Presbyterian Church, in Dayton, Ohio. It began offering a four-year Bachelor of Music degree after relocating to New York in 1929. The College moved to its Princeton campus in 1935 when Sophia Strong Taylor, a philanthropist and devout Presbyterian, donated the land to advance the "training of Ministers of Music of Evangelical Churches."

Taylor's gift came with a significant restriction, that is, she stipulated the land

> shall be used . . . for the purpose of training Ministers of Music of Evangelical Churches; and that in connection with such use the Bible is to be taught to the whole school at least one hour per week in accordance with the principles of the Westminster Confession of Faith. . . . This covenant shall run with the land and be binding upon [Westminster], its successors and assigns.

Moreover, Taylor included a mechanism for enforcing the restriction — a shifting executory interest — to wit:

> Should [Westminster] at any time violate its covenant with respect to the use of any part or all of said premises, then the title to all of such premises, including those heretofore conveyed, shall be forfeited by [Westminster] and such title shall thereupon pass to and vest in the Theological Seminary of the

> Presbyterian Church [now known as Princeton Theological Seminary].

Although Westminster operated independently for decades and had a sizeable endowment, it found itself in severe financial straits in 1991, a semester away from having to close its doors. After the Seminary advised it could not commit to operating the Choir College, Westminster entered into negotiations with Rider. Rider, then a college "of approximately 5,000 students with a focus on business, accounting and a general liberal arts curriculum," was anxious to acquire "the academic and educational benefits of . . . Westminster with its superior music, religion and arts programs."[1]

To facilitate Westminster's merger with Rider "in order to ensure that the full benefit of the [Taylor] Property c[ould] be utilized to advance the viability of Westminster and its programs," and thus "simultaneously advance and foster the primary general intent of the grantor of the Taylor Property," the Seminary agreed to release its shifting executory interest in a quitclaim deed to the Choir College pursuant to the terms of a May 1991 agreement with Westminster. In return, Westminster agreed to execute a promissory note secured by a mortgage on the Taylor Property which would later become the

[1] Plaintiffs assert Rider achieved university status in 1994 when it acquired the Choir College and created the Westminster College of the Arts.

responsibility of the "merger entity." Rider assumed Westminster's obligations under the note and mortgage in an "Assumption Agreement" entered into in June 1992 when it merged with Westminster.

The Merger Agreement between Westminster and Rider states its express purpose is "to preserve, promote, and enhance the existing missions, purposes, programs and traditions" of Westminster. Specifically, the Agreement provides that Westminster "shall merge into Rider pursuant to the New Jersey Nonprofit Corporation Act . . . with the intention of continuing the purposes of [Westminster], in accordance with this Agreement." Article II of the Agreement establishes the "Obligations of the Parties." Section 2.1 states that "upon and after the Merger," Rider will:

> (a) Preserve, promote and enhance the existing missions, purposes, programs and traditions of [Westminster], including, without limiting the generality of the foregoing, the continuation of the mission of [Westminster] through its emphasis on instruction in sacred music; training of ministers of music; choral, vocal, and instrumental performance; and preparation of music teachers.
>
> (b) Ensure that the separate identity of [Westminster], its programs and activities and its faculty will be recognized, and the current and future [Westminster] alumni will continue to be so identified;
>
> (c) Utilize [Westminster's] resources in support of [Westminster's] programs and provide such additional

> funds as may be necessary from time to time beyond the [Westminster] resources to accomplish the obligations of Rider as set forth in this Agreement, including but not limited to the right to cause the [Westminster] campus to be pledged as collateral for loans the proceeds of which are used for these purposes; and
>
> (d) Assume the responsibilities for the obligations, financial liabilities, and daily management of affairs of [Westminster] including the supervision and management of all of [Westminster's] real and personal property. Rider will ensure that the necessary personnel and services are available to accomplish the foregoing, including without limitation, the necessary services relating to accounting, recordkeeping and other similar activities that are necessary for the operation of [Westminster].
>
> [Emphasis added.]

Westminster's obligations in section 2.2 are limited to "fully cooperat[ing] with Rider in its fulfillment of the obligations described" in section 2.1 and providing "all assistance requested by Rider in connection therewith."

Section 2.3 of the Merger Agreement regarding "Future Program," provides:

> The parties recognize that over time there may be changes in the organizational, economic and financial needs and requirements of colleges generally, and [Westminster] and Rider particularly. Accordingly, the parties agree that, notwithstanding anything to the contrary in this Agreement, Rider shall not be obligated to continue any specific programs of

> [Westminster], or to continue to operate or maintain the existing [Westminster] campus, if it determines, in good faith, that such continued action would be substantially impracticable or would substantially adversely affect the . . . merged institutions.
>
> [Emphasis added.]

Rider acknowledged "[i]n this regard," the Seminary's interest as set forth in the 1991 agreement between Westminster and the Seminary, and pledged that

> [i]n the event that the [Westminster] campus is sold within 3 years of the Date of Affiliation, 50% of the Net Proceeds of sale received by Rider . . . will be used as quasi-endowment funds to support programs, activities, curriculum, instruction, or facilities substantially of the nature now offered by [Westminster]. The source of the funds so expended will be identified as Westminster Choir College. The covenants and obligations of this Section 2.3 shall survive Affiliation and Merger.
>
> [Emphasis added.]

Finally, the Agreement provides in Article VII, section 7.2 that the sole remedies for breach of the obligations Rider undertook in Article II are "[t]ermination or specific performance," and in Article VIII, "Miscellaneous," section 8.4, "Parties in Interest," that the Agreement was binding on and would inure to the benefit of Westminster and Rider, their successors and assigns, and "shall not create any rights in or be enforceable by any other person."

Plaintiffs allege Westminster thrived following the merger. The Choir College raised $8,000,000 to fund the Marion Buckelew Cullen Center, its state-of-the-art choral training facility, and received another $5,000,000 in State funding for the Center, which opened in 2014. It raised another $1,500,000 for renovations to the Playhouse. Applications and enrollments were up, and alumni giving was on the rise, nearing $500,000 in 2015. In 2016, Westminster had a $2,500,000 operating surplus, its third straight year of surpluses, and its endowment had risen to nearly $19 million.

Rider, however, was not thriving. In December 2016, the President of Rider advised students, faculty and staff of the seriousness of the University's financial problems. Six weeks later, Rider announced that its "significant financial needs" and "very significant deficit" led to plans to: (1) sell Westminster's Princeton campus to another institution that would operate the Choir College; (2) transfer Westminster's programs to another institution; (3) close the Choir College altogether; or (4) move its programs to Rider's Lawrenceville campus.

In June 2017, four of the alumni plaintiffs in the McMorris action and several Westminster students sued in the Southern District of New York to enjoin Rider from selling, relocating, or closing the Choir College. After the

court expressed doubt over the plaintiffs' standing to enforce the Merger Agreement and they failed to obtain a preliminary injunction, the plaintiffs in that case voluntarily dismissed the action.

In January 2018, members of Westminster's faculty union filed suit in the District Court of New Jersey to block Rider's plan to terminate their employment at the end of the academic year. Those plaintiffs sought to enjoin Rider from selling or closing Westminster until related arbitration regarding their jobs could take place. The district court denied the injunction. An arbitrator eventually found "the Plan to close and 'teach out'" Westminster, that is to reduce the student population thereby reducing the number of needed staff, was permissible and "pursuant to a demonstrated financial need to protect the well-being of the University."

In February 2018, the Seminary filed suit against Rider in the Chancery Division in Mercer County. The Seminary claimed it agreed to assist Westminster in its 1991 affiliation and subsequent merger with Rider "with the express understanding that Westminster, including any successor, would operate and perpetuate Westminster Choir College at [its Princeton] campus, subject to Westminster's promise that its campus would be used to continue the general purpose of the [restrictive] covenant and the intent of the grantor."

The Seminary alleged that Rider's 2017 announcement about selling or closing Westminster "advised the public that [Rider] required an infusion of capital to further its own mission that no longer would include Westminster, and that it intended to monetize the [Westminster] campus created by the [Taylor] grant for this purpose that was wholly unrelated to the grantor's reasons for making the grant in the first instance." The Seminary claimed Rider's expressed intent to sell the Westminster campus and use the proceeds to fund Rider's operations "unrelated to the continued operation of Westminster" violates the 1991 Agreement between the Seminary and Westminster as well as the Assumption Agreement and public policy.

The Seminary also alleged "Westminster and Rider never sought judicial approval" of the 1991 Agreement in which the Seminary agreed to release its shifting executory interest, or the Assumption and Merger Agreements between Westminster and Rider, notwithstanding those entities were, or should have been, aware "that, due to the covenant, judicial action was required to modify the covenant to relieve Westminster and/or Rider of the restrictions that run with the campus."[2] The Seminary claimed because no court has ever

[2] The Seminary and Rider have another dispute over the 1991 note and mortgage Westminster gave to the Seminary in exchange for the Seminary's

extinguished the restrictive covenant, it continues to burden the property, meaning "Rider does not possess fee simple title to the campus," and "[i]f Rider, or any successor to it, ceases to operate and maintain a college for training ministers of music for evangelical churches on the Westminster campus, ownership of the campus shifts to the Seminary in accordance with the [restrictive] covenant."

In its complaint against Rider, the Seminary sought, among other things, a declaration of its rights with respect to the promissory note it took from Westminster in exchange for the quit claim deed and/or a declaration that the restrictive covenant contained in the Taylor deed remains in effect. That suit remains pending in the trial court.

In June 2018, Rider announced it would sell the Choir College to Beijing Kaiwen Education Technology Company, a commercial for-profit entity controlled by the Chinese government, which plaintiffs "allege had been a steel

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quit claim deed, which obligations Rider subsequently assumed. The Seminary contends that on any sale of the campus, the Seminary will be entitled to at least $8,000,000 in accordance with those documents, whereas Rider contends that nothing will be due because it is entitled to a credit for all sums it has expended in the operation of Westminster since the date of the Merger Agreement. As the matter remains pending in the trial court, we express no opinion on any issues raised therein. We refer to the action here only to provide a full picture of the ongoing controversy over Rider's actions with regard to the Choir College.

and bridge maker until shortly before the announcement of the sale." Plaintiffs contend Kaiwen stated it would place Westminster's real property and endowment, both included in the sale, on its commercial and corporate books and required a clause in the sale agreement allowing it to terminate Westminster's existence at any time after its acquisition of the Choir College.

Plaintiffs allege that announcement resulted in the withdrawal of seventy incoming Westminster freshman, leaving a class of only twenty-five new students. The following school year (2019-2020), only thirty-five freshmen enrolled at Westminster, leaving only two-full sized classes, juniors and seniors, at the Choir College. Plaintiffs also alleged key faculty left the institution and donations dried up.

The McMorris plaintiffs filed their complaint in this action in September 2018 against Rider and Kaiwen seeking to block the sale of Westminster to Kaiwen. The McMorris plaintiffs also named the Attorney General as a nominal defendant in her role as protector and overseer of charitable trusts.[3] In December 2018, an assistant attorney general wrote to the Chancery judge in both the McMorris action and the Seminary suit, although the Attorney

[3] The McMorris plaintiffs subsequently voluntarily dismissed the Attorney General as a defendant.

General is not a party to the latter action, to advise the court the Attorney General's Office had been reviewing Rider's proposed sale of Westminster since it was announced, and although its examination was not yet complete, largely because Rider had failed to respond to the Attorney General's request for information and documents, the Office welcomed the opportunity to advise the court of the Attorney General's position as the cases progressed.

The sale to Kaiwen subsequently fell through. Plaintiffs allege the company, a foreign, for-profit entity with no experience in higher education, could not qualify to operate a not-for-profit American college.

On July 1, 2019, Rider announced it intended to move all of Westminster's programs to Rider's Lawrenceville campus by September 2020, claiming it was "not financially feasible to allow Westminster to continue on its present course as a separate, fully operational campus," and that the move would "serve[] the best interests of the entire institution." The McMorris plaintiffs subsequently amended their complaint to dismiss Kaiwen as a defendant and refocused their claims on Rider's planned relocation of Westminster.

Specifically, the McMorris plaintiffs alleged that, through its actions over the prior two and one-half years, Rider had "caused the wastage and

destruction of the charitable trust known as Westminster." They contended Rider's Lawrenceville campus was without the facilities necessary for the Choir College's operations, and that Rider had no plan to build such facilities.

In particular, the McMorris plaintiffs claimed Rider had only one auditorium used by the musical theatre program, a small theatre in the student center and no faculty or practice rooms. Rider intended to store the Talbot Library collection, consisting of "67,000 music-related books, music scores and periodicals, approximately 5,400 choral music titles in performance quantities, a choral music reference collection of more than 80,000 titles" and "25,000 sound and video recordings," in the basement of Rider's Lawrenceville library.

The McMorris plaintiffs sought to permanently enjoin the relocation of Westminster, alleging that Rider's actions were in violation of the restrictive covenant and the shifting executory interest in the Taylor deed, the common law of charities and cy pres principles, as well as the Merger Agreement and Westminster's Agreement with the Seminary. The McMorris plaintiffs also sought an accounting, the appointment of a receiver and the reinstatement of the Westminster Choir College Corporation and Board of Trustees.

In October 2019, the Vazquez plaintiffs filed their own complaint against Rider in the Chancery Division, repeating the allegations made by the McMorris plaintiffs and seeking the same relief with the exception of the appointment of a receiver. The Vazquez plaintiffs alleged they had enrolled at Westminster "because of its unique facilities and the exclusivity of its conservatory environment." They maintained Rider's Lawrenceville campus lacked the facilities and ambiance needed to attract elite voice, choral and opera students. The Vazquez plaintiffs contended that, unlike conventional college students, conservatory students engaged in continuous classroom work throughout the day, generally from 8:00 a.m. to 6:00 p.m., followed by practice and rehearsals until 9:00 or 10:00 p.m. They alleged Rider's dean had informed them only sixteen practice rooms would be built on the Lawrenceville campus, and that they would have to seek out churches and halls on their own to obtain practice space.

Rider moved to dismiss both complaints, arguing plaintiffs lacked standing to pursue their claims; the Taylor deed did not prevent relocation of the Choir College; claims pertaining to the sale of the campus were premature; any claim attacking the agreement between Westminster and the Seminary in which the Seminary relinquished its shifting executory interest was untimely;

and plaintiffs' claims for an accounting, reinstatement of the Westminster Board of Trustees and declaratory and injunctive relief were remedies, not causes of action.

While Rider's motion to dismiss was pending, the Attorney General provided the court with an updated comprehensive statement of the Office's position on several issues in this matter and the Seminary litigation. Most significantly for our purposes, the Attorney General concluded the Choir College was not a charitable trust, but instead was the trustee of the charitable trust Taylor created when she gifted the Princeton land and buildings to Westminster. The Attorney General also concluded the shifting executory interest Taylor gave the Seminary, being both "indestructible" and "inalienable," see MacKenzie v. Trs. of Presbytery of Jersey City, 67 N.J. Eq. 652, 668 (E. & A. 1905), remained in the Seminary, and thus its agreement to relinquish its interest to Westminster in the quit claim deed was "void and without legal effect."

The Attorney General further concluded that following Westminster's merger with Rider, Rider stepped into Westminster's shoes as trustee of the Taylor charitable trust property but did not assume the Seminary's shifting executory interest in it, because the Seminary's attempt to relinquish its

interest was void ab initio, rendering the subsequent Assumption Agreement between Westminster and Rider without legal effect. Assuming Rider had not already violated the terms of the trust and triggered the shifting executory interest (an issue on which the Attorney General lacked sufficient information to opine), Rider remained the trustee and could, subject to the Attorney General's review, sell the Taylor property.

Importantly, however, the Attorney General emphasized that while the purchaser would take the property free of the trust terms, the trust would remain intact, and thus the proceeds of the sale would become part of the trust corpus. Should the trustee, whether Rider or the Seminary, wish to use the sale proceeds for purposes other than those expressly permitted by the trust, it would need to seek court approval in a cy pres proceeding.[4]

As to Rider's plan to relocate Westminster to Lawrenceville, the Attorney General concluded that nothing in the Taylor trust required Westminster to remain on the Princeton campus. "Far from demanding that [Westminster] remain forever on the Princeton campus, Taylor specifically envisioned a time and circumstance when [Westminster] would have to vacate

[4] As a corollary of that proposition, the Attorney General opined that Westminster's $19 million endowment should not be included in any sale of the campus without a separate cy pres proceeding.

the land and relinquish it to the Seminary." Instead, the trust merely "specifies the consequences that will occur if [Westminster] — or now Rider as the substitute trustee after the merger — ceases to use the land for the mandated purposes." Specifically, the Attorney General noted the purposes of the Taylor trust, that the land be used for the "training of ministers of music for Evangelical churches" and Bible study "in accordance with the principles of the Westminster Confession of Faith," could "still be undertaken and performed by Rider, the Seminary, or a third party entity."

Perhaps most significant for this matter, the Attorney General concluded its oversight responsibilities to ensure proper governance of non-profit charitable corporations under the common law and the Nonprofit Corporation Act do "not extend to [Westminster] as a discrete entity." The Attorney General noted Westminster ceased to exist "as a separate non-profit corporation" after its 1992 merger with Rider. The Attorney General opined that Rider, under well-settled tenets of non-profit law, "must govern [Westminster] according to the mission and purpose of Rider as outlined in Rider's Certificate of Incorporation and Bylaws." (Emphasis added). The Attorney General's view was that Westminster is now "an academic program

of Rider that the Rider Board can make changes to in furtherance of Rider's mission and purpose."

Finally, the Attorney General opined that plaintiffs' claims that Rider promised numerous times in the 1991 Merger Agreement to continue Westminster's mission and preserve the Choir College as a separate and unique entity, "[w]hether true or not," a point on which the State took no position, "do not implicate charitable trust law," because Westminster is not a charitable trust. The Attorney General asserted "the remedy for Rider's alleged failure to abide by its obligations under the" 1991 Merger Agreement "must be found — if at all — in the law of contracts or quasi-contracts." See Beukas v. Bd. of Trs. of Fairleigh Dickinson Univ., 255 N.J. Super. 552, 568 (Law. Div. 1991) ("Applying quasi-contract theory to resolving university-student conflicts over an administrative decision to terminate a college or program for financial reasons"), aff'd o.b., 255 N.J. Super. 420 (App. Div. 1992).

The trial judge dismissed all claims in both complaints. The judge agreed with the Attorney General that Westminster is not a charitable trust but rather the former trustee of the charitable trust created by Taylor's gift of the Princeton property to Westminster, see MacKenzie, 67 N.J. Eq. at 661-63 (explaining creation of a trust by deed), its position now occupied by Rider

following its merger with Westminster, N.J.S.A. 15A:10-6(d) (providing following merger of non-profit corporations that all property vest in the surviving corporation, "remain[ing] subject to any trusts on which it may have been theretofore held"). The judge thus dismissed all of plaintiffs' claims premised on Westminster or Rider being charitable trusts under the law.

The judge further found plaintiffs did not, and could not, argue they had any "special interest" in the corpus of the charitable trust, that is the land and buildings Taylor conveyed to the Choir College, sufficient to confer standing to challenge Rider's decision to relocate Westminster to Rider's Lawrenceville campus. See Di Cristofaro v. Laurel Grove Mem'l Park, 43 N.J. Super. 244, 250 (App. Div. 1957) (explaining the rule that enforcement of a charitable trust "is to be had by the Attorney-General, by a trustee or by one having a special interest in its enforcement"). Moreover, the judge found that even if plaintiffs could show such an interest, they could not hope to block Rider's relocation of Westminster on that basis, as the Taylor deed does not mandate the Choir College remain on the Princeton campus.

The judge dismissed plaintiffs' claims brought under the 1991 Agreement between Westminster and the Seminary, the Merger Agreement between Westminster and Rider and the 1992 Assumption Agreement, finding

plaintiffs were neither parties to nor intended third-party beneficiaries of those contracts. See Broadway Maint. Corp. v. Rutgers, State Univ., 90 N.J. 253, 259 (1982) (explaining "[t]he contractual intent to recognize a right to performance in the third person is the key," as without it "the third person is only an incidental beneficiary, having no contractual standing").

The judge further found the McMorris plaintiffs did not have standing to bring a claim for the appointment of a receiver to act for the Choir College because they are not among the categories of persons the Legislature has deemed may seek a receiver for a non-profit corporation under N.J.S.A. 15A:14-2. The judge agreed with Rider that plaintiffs' claims for an accounting, declaratory and injunctive relief and reinstatement of the Westminster College Corporation were properly dismissed as they failed to assert causes of action.

As to plaintiffs' claims challenging relocation of the Choir College, the judge acknowledged that higher education being a matter of significant public importance, Shelton Coll. v. State Bd. of Educ., 48 N.J. 501, 509 (1967), plaintiffs need only possess "any slight additional private interest" to afford them standing to challenge Rider's decision to move the Choir College to Lawrenceville, see Salorio v. Glaser, 82 N.J. 482, 491 (1980) (quoting N.J.

State Chamber of Com. v. N.J. Election L. Enf't Comm'n, 82 N.J. 57, 68-69 (1980)). He found, however, that the McMorris alumni and donor plaintiffs could not establish any private interest.

In considering the standing of graduates of Westminster among the McMorris plaintiffs, the judge looked to out-of-state cases declining to find standing in alumni to challenge administrative decisions and policies of their college, see, e.g., Tishok v. Dep't of Educ., 133 A.3d 118, 122-23 (Pa. Commw. Ct. 2016) (collecting cases). The judge found those cases persuasive, and although acknowledging the attachment Choir College graduates may feel for their alma mater, found it insufficient to confer standing to challenge Rider's actions here.

The judge likewise found New Jersey does not recognize the standing of charitable donors to challenge management decisions of the charity to which they've contributed. See Ludlam v. Higbee, 11 N.J. Eq. 342, 347 (Ch. 1857) (noting the "general rule" that contributors to a charitable fund lack standing to challenge management of the fund as "there must be something peculiar in the transaction beyond the mere fact of contribution to give a contributor to a charitable fund a foothold in this court for the purpose of questioning the disposition of the fund"). The judge acknowledged the plaintiff donors'

contributions of their time and money to Westminster, but found they failed to demonstrate an interest that differed in any meaningful way from the public at large.

The judge did find standing in the Vazquez student plaintiffs and the McMorris faculty plaintiffs, noting both groups had a "slight but sufficient private interest" in the matter. Specifically, the judge noted the Vazquez plaintiffs were current students who had chosen to attend Westminster based on its facilities and the opportunities they offered and were genuinely concerned about the loss of performance venues, faculty studios, and practice spaces that would result from the relocation of the Choir College. The judge found the McMorris faculty plaintiffs likewise raised legitimate concerns about damage to Westminster's mission and reputation, in their case affecting their livelihoods. The judge concluded their "relationship with the subject matter of the litigation satisfies the essential purpose of the standing doctrine." See Triffin v. Somerset Valley Bank, 343 N.J. Super. 73, 80 (App. Div. 2001) (explaining the requirements to assure invocation and exercise of judicial power is appropriate).

Notwithstanding his finding the Vazquez plaintiffs and the McMorris faculty plaintiffs had standing to "bring suit" on their non-contractual claims,

the judge dismissed their claims, finding plaintiffs failed to allege Rider acted in bad faith in first attempting to sell the Choir College and, when that failed, deciding to relocate it to Lawrenceville. The judge concluded that "without allegations of arbitrariness or bad faith," the business judgment rule insulated Rider from liability. See Green Party v. Hartz Mountain Indus., 164 N.J. 127, 147 (2000) (explaining "[t]he business judgment rule has its roots in corporate law as a means of shielding internal business decisions from second-guessing by the courts").

Plaintiffs appeal, reprising the arguments they made to the trial court, and adding the court erred in finding they failed to plead that Rider has acted arbitrarily and in bad faith. Rider claims plaintiffs' appeal is moot because it completed the relocation of Westminster to Rider's Lawrenceville campus in September 2020.

We review the grant of a motion to dismiss a complaint de novo, using the same standard that governs the trial court. Smerling v. Harrah's Ent., Inc., 389 N.J. Super. 181, 186 (App. Div. 2006). Thus, we search "the complaint[s] 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." Printing Mart-Morristown, 116 N.J. at 746 (quoting Di Cristofaro, 43 N.J. Super. at

252). "[W]e accept the facts alleged in the complaint as true, granting plaintiff[s] 'every reasonable inference of fact.'" Guzman v. M. Teixeira Int'l., Inc., No. A-0841-21, ___ N.J. Super. ___, ___ (2023) (slip op. at 1) (quoting Major v. Maguire, 224 N.J. 1, 26 (2016)). Our review of the law and the legal consequences flowing from the facts plaintiffs have alleged is likewise de novo. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

We begin our analysis by rejecting Rider's claim that the appeals should be dismissed as moot. A matter is only moot when our decision "can have no practical effect on the existing controversy." Redd v. Bowman, 223 N.J. 87, 104 (2015) (quoting Deutsche Bank Nat'l Tr. Co. v. Mitchell, 422 N.J. Super. 214, 221-22 (App. Div. 2011)). Rider reasons that because the central object of these suits was to prevent Rider from relocating Westminster to Rider's Lawrenceville campus, and that move happened in September 2020, "there is no longer any relocation to prevent and therefore plaintiffs' claims are moot."

Rider has not, however, identified any impediment to its ability to comply with an order directing it to move the Choir College back to Princeton should plaintiffs succeed on their claims. As that order would undoubtedly have a practical effect on the controversy, we cannot accept Rider's contention

the case is moot, leaving aside that the questions presented concern matters of considerable public interest. See Reilly v. AAA Mid-Atl. Ins. Co. of N.J., 194 N.J. 474, 484 (2008) (noting the Court has "often declined . . . to dismiss a matter on grounds of mootness, if the issue in the appeal is an important matter of public interest").

Turning to the merits, we have nothing to add to the trial court's reasons for dismissing plaintiffs' claims based on their erroneous contention that Westminster and Rider are charitable trusts, plaintiffs' failure to assert any "special interest" in the actual charitable trust, which consists of the land and buildings Taylor conveyed to the Choir College, and that even if plaintiffs could show some special interest in the land, which they cannot, it would not assist them in challenging Rider's relocation of the Choir College as the Taylor deed does not prohibit Westminster's relocation. We are also satisfied, based on our review of the record, that plaintiffs' arguments that the trial court erred in dismissing their claims for enforcement of the shifting executory interest in the Taylor deed and the appointment of a receiver are without sufficient merit to warrant addressing here. See R. 2:11-3(e)(1)(E). We thus turn to the issues of standing.

Standing is simply "the legal right to set judicial machinery in motion." Repko v. Our Lady of Lourdes Med. Ctr., Inc., 464 N.J. Super. 570, 574 (App. Div. 2020) (quoting Eder Bros. v. Wine Merchs. of Conn., Inc., 880 A.2d 138, 143 (Conn. 2005)). Our courts have long held "[e]ntitlement to sue requires a sufficient stake and real adverseness with respect to the subject matter of the litigation." N.J. State Chamber of Com., 82 N.J. at 67 (citing Crescent Park Tenants Ass'n v. Realty Equities Corp., 58 N.J. 98, 107 (1971)). "A substantial likelihood of some harm visited upon the plaintiff in the event of an unfavorable decision is needed . . . ." Ibid. What is required is that "the relationship of plaintiffs to the subject of the litigation and to other parties must be such to generate confidence in the ability of the judicial process to get to the truth of the matter and in the integrity and soundness of the final adjudication." Id. at 69.

Our standing rules, albeit liberal, preclude suits initiated by "plaintiffs who are 'mere intermeddlers' or are merely interlopers or strangers to the dispute." People For Open Gov't v. Roberts, 397 N.J. Super. 502, 509 (App. Div. 2008) (quoting Crescent Park, 58 N.J. at 107). "[I]n cases involving substantial public interest," however, "'but slight private interest, added to and harmonizing with the public interest' is sufficient to give standing." In re

Valley Hosp., 240 N.J. Super. 301, 304 (App. Div. 1990) (alteration in original) (quoting Elizabeth Fed. S. & L. Ass'n v. Howell, 24 N.J. 488, 499 (1957)).

Plaintiffs have not identified any New Jersey case to support their argument that alumni have standing to challenge administrative decisions and policies of their alma mater, and they do not distinguish the out-of-state cases the trial court found persuasive rejecting such standing. Nor have plaintiffs identified anything "peculiar . . . beyond the mere fact of contribution" that would give the McMorris donor plaintiffs "a foothold in this court for the purpose of questioning the disposition" of their contributions to Westminster over many years. See Ludlam, 11 N.J. Eq. at 347.

Plaintiffs have provided us no reason to question the trial court's finding that the McMorris alumni and donor plaintiffs do not evidence any personal stake in Westminster's future or substantial likelihood of any harm they would suffer from Westminster's relocation to Lawrenceville. See In re Adoption of Baby T, 160 N.J. 332, 340 (1999) (explaining "[a] substantial likelihood of some harm visited upon the plaintiff in the event of an unfavorable decision is needed for the purposes of standing"). But we are also satisfied we need not examine the question closely, because the Vazquez student plaintiffs and the

McMorris faculty plaintiffs have easily demonstrated their stake in Westminster's fate and the harm they would suffer should they be deprived of access to the Choir College's conservatory campus in Princeton for their studies and professional work. See Howard Sav. Inst. v. Peep, 34 N.J. 494, 498 (1961) (observing lack of standing argument "[i]n a sense" moot because others with unquestioned standing pressed the same claims and arguments in the case).

We agree with the trial court the Vazquez plaintiffs and the McMorris faculty plaintiffs easily demonstrate their standing to challenge Rider's actions here under the common law and the Nonprofit Corporation Act, and that the business judgment rule is the measure against which Rider's actions should be judged. See N.J.S.A. 15A:6-14; Beukas, 255 N.J. Super. at 566 (holding university's decision to close dental college should be judged by whether "the university act[ed] in good faith and, if so, did it deal fairly with its students"). We disagree, however, that plaintiffs failed to allege Rider acted arbitrarily and in bad faith in deciding to first sell and then relocate Westminster to Rider's Lawrenceville campus.[5]

[5] Although we are satisfied plaintiffs' complaint, fairly read, asserts Rider has acted arbitrarily and in bad faith, we question whether it was plaintiffs'

Plaintiffs alleged in their complaints that Rider has caused the waste and destruction of the Choir College "through an illegal and ill-conceived plan" to alleviate Rider's financial distress by selling Westminster, its Princeton campus and nearly $20,000,000 endowment to a foreign for-profit company with no experience leading a conservatory or any institution of higher learning, which insisted on a clause in the agreement permitting it to end Westminster's existence at any time. Plaintiffs also alleged Rider's efforts to sell the Choir College decimated its enrollment, dried up its fundraising and damaged its reputation and goodwill.

In addition, plaintiffs pleaded that "[n]o material and exigent economic condition at Westminster exists to substantiate" Rider's more recent plan to "abandon[] the Westminster campus" and its specialized facilities, including the recently completed $13,000,000 Cullen Center, which Rider has "no plan and . . . no capacity" to replicate in Lawrenceville. Plaintiffs claim "Rider's

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obligation to plead defendant's lack of good faith. At least one court has held the "immunity afforded by N.J.S.A. 15A:6-14 is . . . . an affirmative defense that needs to be pleaded and proven by a defendant, and as to which the plaintiff is normally entitled to discovery." In re Newark Watershed Conservation & Dev. Corp., 560 B.R. 129, 150 (Bankr. D.N.J. 2016) (noting the facts supporting such "defense are peculiarly within the defendant's knowledge and are more appropriately resolved after discovery, on a summary judgment motion or at trial" instead of on a motion to dismiss).

intention to move Westminster to [Rider's] Lawrenceville campus, to sell the Princeton campus and keep the proceeds," in effect "monetiz[ing] it for Rider's own purposes," is an abandonment of its obligations "as the charitable steward and trustee of Westminster."

We're satisfied those allegations satisfy the Printing Mart standard for pleading Rider has acted arbitrarily and in bad faith. See 116 N.J. at 746 (noting "the test for determining the adequacy of a pleading . . . [is] whether a cause of action is 'suggested' by the facts"). Thus, we conclude the trial court erred in granting Rider's motion to dismiss the claims brought by the Vazquez and McMorris faculty plaintiffs under the common law and the Nonprofit Corporation Act.

We also conclude the trial court erred in finding the Vazquez and McMorris faculty plaintiffs lacked contractual standing to enforce those obligations Rider undertook in the 1991 Merger Agreement it agreed would survive the merger. N.J.S.A. 2A:15-2 states that "[a] person for whose benefit a contract is made . . . may sue thereon in any court . . . although the consideration of the contract did not move from him." The statute merely codified long-standing New Jersey law of third-party beneficiaries. See Broadway Maint. Corp., 90 N.J. at 259 n.5.

Our Supreme Court has explained that "[t]he principle that determines the existence of a third party beneficiary status focuses on whether the parties to the contract intended others to benefit from the existence of the contract, or whether the benefit so derived arises merely as an unintended incident of the agreement." Id. at 259. "The determining factor . . . is the intention of the parties who actually made the contract." Borough of Brooklawn v. Brooklawn Hous. Corp., 124 N.J.L. 73, 76 (E. & A. 1940). In other words, because "the persons who agree upon the promises, the covenants, the guarantees . . . are the persons who create the rights and obligations which flow from the contract," our courts have long held "the real test is whether the contracting parties intended that a third party should receive a benefit which might be enforced in the courts." Id. at 76-77.

Applying those precedents, the trial court found plaintiffs were precluded from enforcing any of the contractual provisions of the Merger Agreement because section 8.4 expressly states the Agreement was "binding on" and would "inure to the benefit of the parties . . . and their respective successors and assigns," and "shall not create any rights in or be enforceable by any other person." But section 8.4 is not the only term in the Agreement. We think the court read the Merger Agreement too narrowly.

The interpretation of contract language is generally a question of law unless its meaning is unclear and turns on conflicting testimony. Bosshard v. Hackensack Univ. Med. Ctr., 345 N.J. Super. 78, 92 (App. Div. 2001). Because the issue of whether the Vazquez plaintiffs and the McMorris faculty plaintiffs are intended third-party beneficiaries of the Merger Agreement is solely one of contractual construction, we owe no special deference to the court's assessment of the language. Manalapan Realty, 140 N.J. at 378. It is axiomatic, of course, that contract provisions are to "be read as a whole, without artificial emphasis on one section, with a consequent disregard for others." Borough of Princeton v. Bd. of Chosen Freeholders of Mercer, 333 N.J. Super. 310, 325 (App. Div. 2000), aff'd, 169 N.J. 135 (2001). "Literalism must give way to context." Ibid.

As we noted at the beginning of this opinion, Rider assumed very specific obligations toward the preservation of the mission and purpose of Westminster in the Merger Agreement. Specifically, Rider agreed it would "[p]reserve, promote and enhance the existing missions, purposes, programs and traditions" of Westminster; "[e]nsure that the separate identity of [Westminster] . . . and its faculty will be recognized"; and that it would use Westminster's "resources in support of [Westminster's] programs and provide

such additional funds as may be necessary from time to time beyond the [Westminster] resources to accomplish the obligations of Rider as set forth in this Agreement."

The parties also acknowledged that time might well bring "changes in the organizational, economic and financial needs and requirements" of Westminster and Rider, and thus that Rider was not "obligated to continue any specific programs of [Westminster], or to continue to operate or maintain the existing [Westminster] campus." Critically, however, Rider agreed it would be relieved of its obligations only "if it determine[d], in good faith, that such continued action would be substantially impracticable or would substantially adversely affect the . . . merged institutions." The parties expressly agreed "[t]he covenants and obligations of this Section 2.3" relating to Rider's obligation to continue any specific Westminster program or to operate or maintain Westminster's Princeton campus "shall survive affiliation and merger."

As the Attorney General asserted and the trial court found, Westminster ceased to have an independent existence on its merger with Rider. Thus, to accept Rider's position the Vazquez student plaintiffs and McMorris faculty plaintiffs were not intended third-party beneficiaries with standing to enforce

Rider's obligations under the Merger Agreement is to conclude no one can enforce them, rendering those very specific obligations Rider agreed would survive the merger unenforceable and thus meaningless. We do not believe that is a reasonable or fair reading of the Merger Agreement as a whole.

In merging with Westminster, Rider obtained Westminster's nearly thirty-acre campus in the heart of Princeton Borough as well as Westminster's multi-million-dollar endowment. Rider didn't pay anything for those assets. Indeed, the Merger Agreement provides that Westminster would be responsible even for its fees for lawyers, accountants, and financial advisors in connection with the transaction, which obligation survived affiliation. The only consideration Westminster received for the transfer of all its considerable assets to Rider was Rider's promises to "[p]reserve, promote and enhance" Westminster's "existing missions, purposes, programs and traditions" and to "[e]nsure that the separate identity of [Westminster] . . . and its faculty will be recognized." It is not reasonable to conclude from a reading of the Agreement as a whole and the circumstances surrounding its execution that the parties intended those promises to be unenforceable.

We thus cannot interpret the Agreement in a manner to render those promises meaningless, particularly as the parties specifically agreed that

Rider's promise not to dispose of or abandon Westminster's Princeton campus or to discontinue its specific programs unless Rider determined in good faith that continuing to do so "would be substantially impracticable or would substantially adversely affect . . . the merged institutions," would survive the merger. Rider's good faith in first attempting to sell and then relocate Westminster to Rider's Lawrenceville campus must be judged — under the Merger Agreement — in the context of the contract's express purpose to "[p]reserve, promote and enhance the existing missions, purposes, programs and traditions" of Westminster and the specific obligations Rider undertook in section 2.

To deny the right of the Vazquez student plaintiffs and the McMorris faculty plaintiffs to enforce those obligations Rider agreed would survive the merger based on the single sentence in section 8, its "Miscellaneous" article, that the "Agreement shall not create any rights in or be enforceable" by anyone other than the parties, their successors and assigns, would, in our view, place "artificial emphasis" on that section, "with a consequent disregard" for the obligations Rider assumed toward Westminster in section 2, "Obligations of the Parties." See Borough of Princeton, 333 N.J. Super. at 325. "In construing a contract a court must not focus on an isolated phrase but should read the

contract as a whole as well as considering the surrounding circumstances." Wheatly v. Sook Suh, 217 N.J. Super. 233, 239 (App. Div. 1987).

The agreement "must be considered in the context of the circumstances under which it was entered into and it must be accorded a rational meaning in keeping with the express general purpose." Joseph Hilton & Assocs., Inc. v. Evans, 201 N.J. Super. 156, 171 (App. Div. 1985). "A subsidiary provision is not so to be interpreted as to conflict with the obvious 'dominant' or 'principal' purpose of the contract." Newark Publishers' Ass'n v. Newark Typographical Union, 22 N.J. 419, 426 (1956).

Here, "the obvious 'dominant' or 'principal' purpose" of the Merger Agreement to "preserve, promote, and enhance the existing missions, purposes, programs and traditions" of Westminster, was to continue to provide its students with high quality conservatory training in non-amplified choral, operatic and instrumental music with a significant focus on sacred music through first-rate faculty. The Westminster students and faculty engaged in that enterprise were not mere "incidental beneficiaries" of the Merger Agreement. The continued education of current and future Westminster students was the Agreement's main, if not sole, purpose.

Accordingly, we are satisfied the Vazquez student plaintiffs and McMorris faculty plaintiffs were indeed intended beneficiaries of the Merger Agreement who may sue to enforce Rider's obligations under the Agreement. See Rieder Cmtys., Inc. v. Twp. of N. Brunswick, 227 N.J. Super. 214, 221-22 (App. Div. 1988) (noting the essence of third-party beneficiary status is that the contract be made for the "third party within the intent and contemplation of the contracting parties . . . . derived from the contract or surrounding facts" (quoting Gold Mills, Inc. v. Orbit Processing Corp., 121 N.J. Super. 370, 373 (Law Div. 1972))). If the interpretation were otherwise, the single sentence in the "Miscellaneous" provisions of the Agreement that it "shall not create any rights in or be enforceable by" anyone other than the parties, their successors and assigns, which in context appears as nothing more than boilerplate, would defeat the dominant purpose of the parties in agreeing to merge.

Finally, as we previously observed, if Westminster students and faculty cannot enforce Rider's contractual obligations, there will be no one else to do so. Cf. Howard Sav., 34 N.J. at 500 (finding standing in executor to appeal from judgment on behalf of beneficiaries of scholarship loan fund reformed in a cy pres proceeding as no one else, including the Attorney General, represented their interests). As the Attorney General's Office noted to the trial

court, its oversight responsibilities "do not extend to [Westminster] as a discrete entity."

Further, as the Attorney General asserted and the court found, Westminster, having given up its independent existence in the merger, is now simply an academic program of Rider. Rider's obligation under the non-profit laws is to govern Westminster "according to the mission and purpose of Rider as outlined in Rider's Certificate of Incorporation and Bylaws." (Emphasis added.) The Rider Board of Trustees is accordingly empowered to make changes to Westminster "in furtherance of Rider's mission and purpose." Thus, although the Vazquez student plaintiffs and the McMorris faculty plaintiffs may pursue their claims that Rider acted arbitrarily or in bad faith in relocating Westminster to Rider's Lawrenceville campus under the common law and the Nonprofit Corporation Act, those claims must be judged in light of the Rider Board's obligations to Rider, the merged entity, not to Westminster.

As the Attorney General observed in its filing with the trial court, relief for Rider's alleged failure to abide by its obligations under the Merger Agreement cannot be found under the non-profit law but "must be found — if at all — in the law of contracts or quasi-contracts." Thus, the claims the Vazquez plaintiffs and the McMorris faculty plaintiffs pursue under the

common law and the Nonprofit Corporation Act are significantly different from those they press under the Merger Agreement. A remedy for Rider's breach of its obligations to Westminster can only be had if those plaintiffs have contractual standing to pursue it, which we are satisfied they do for the reasons expressed.

We reverse the trial court's decision dismissing the Vazquez student plaintiffs' and the McMorris faculty plaintiffs' claims against Rider under the common law and the Nonprofit Corporation Act, as well as those plaintiffs' contractual claims for Rider's alleged breach of the obligations it undertook in the 1991 Merger Agreement and remand to permit them to pursue those claims. We affirm the decision in all other respects. We do not retain jurisdiction.

Affirmed in part, reversed in part, and remanded.