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SUPERIOR COURT OF NJ
MERCER VICINAGE
CHANCERY

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| VICTORIA VAZQUEZ, ET AL., ON BEHALF OF THEMSELVES & OTHERS, SIMILARLY SITUATED,<br><br>Plaintiffs,<br><br>v.<br><br>RIDER UNIVERSITY,<br><br>Defendant. | SUPERIOR COURT OF JERSEY<br>CHANCERY DIVISION<br>MERCER COUNTY<br><br>DOCKET NO. C-80-19<br><br>CIVIL ACTION<br><br>**ORDER** |

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| 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 NICHOLASON; ELIZABETH SCHEIBER; JAMES JORDAN; and MICHAEL J. BROGAN,<br><br>Plaintiffs,<br><br>v.<br><br>RIDER UNIVERSITY,<br><br>Defendant. | SUPERIOR COURT OF JERSEY<br>CHANCERY DIVISION<br>MERCER COUNTY<br><br>DOCKET NO. C-69-18<br><br>CIVIL ACTION<br><br>**ORDER** |

**THIS MATTER** having been brought before the Court on February 14, 2020, the Hon. Robert Lougy, P.J.Ch., presiding, by Angelo A. Stio III, Esq. and William J. Levant, Esq., attorneys for Defendant Rider University, on Motions to Dismiss Plaintiffs' complaints, and Bruce I. Afran, Esq., attorney for Plaintiffs, having filed opposition; and Defendant having filed Replies; and the Court having granted the parties' requests for oral argument; and the Court having considered the parties' papers and arguments; and for the reasons as stated below; and for good cause shown;

**IT IS** on this 2nd day of March 2020 **ORDERED** that:

1. Defendant's motion to dismiss the complaint of Victoria Vazquez, et al., in the matter docketed as C-80-19 is **GRANTED**.
2. Defendant's motion to dismiss the complaint of Howard McMorris, et al., in the matter docketed as C-69-18 is **GRANTED**.
3. Defendant shall serve a true copy of this Order on counsel for Plaintiffs within seven (7) days of receipt.

ROBERT LOUGY, P.J. Ch.

**Pursuant to Rule 1:6-2(f) the Court provides the following Statement of Facts and Conclusions of Law:**

This matter comes before the Court on Defendant's applications for dismissal of Plaintiffs' complaints. The Court granted the parties' requests for oral argument. See R. 1:6-2(d) (stating that, upon request of a party in motions involving matters other than discovery

or calendaring, request for oral argument "shall be granted as of right."); see also Raspantini v. Arocho, 364 N.J. Super. 528 (App. Div. 2003).

Plaintiffs in McMorris v. Rider filed their complaint on September 6, 2018. They filed an amended complaint on October 18, 2018. Plaintiffs in McMorris are a group of faculty members, former board members, alumni, and donors challenging Rider University's decision to relocate operations and programs of Westminster Choir College ("WCC") to Rider's campus in Lawrenceville, New Jersey. Plaintiffs in Vazquez v. Rider are a group of seventy-one WCC undergraduate and graduate students. They filed their Complaint on October 29, 2019. Rather than file an answer, Defendant moves under Rule 4:6-2(e) to dismiss the complaints for failure to state a claim.

The relevant facts are as follows.[1]

## I. The Strong Taylor Deed and Westminster Choir College

In 1920, John Finley Williamson established the WCC as a music school in Dayton, Ohio. In 1929, the school moved to Ithaca, New York and became an affiliate of Ithaca College. On July 22, 1935, Sophia Strong Taylor deeded twenty-eight acres in Princeton,

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[1] Rule 4:6-2 provides that if a motion to dismiss relies upon any material outside the pleadings, it is automatically converted to a summary judgment motion. However, the motion is not converted by filing with the court a document referred to in the pleading. Myska v. N.J. Mfrs. Ins. Co., 440 N.J. Super. 458, 482 (App. Div. 2015). "In evaluating motions to dismiss, courts consider 'allegations in the complaint, exhibits attached to the complaint, matters of public record, and documents that form the basis of a claim.'" Banco Popular N. Am. v. Gandi, 184 N.J. 161, 183 (2005) (quoting Lum v. Bank of Am., 361 F.3d 217, 222 n.3 (3d Cir. 2004)). Because the Strong Taylor Deed, the Merger Agreement, WCC-Seminary Agreement, and the Assumption Agreement form the basis of Plaintiff's claims, the parties' inclusion and reference to those documents, and the Court's consideration of them, do not convert the instant action into a summary judgment motion. No party contends otherwise.

New Jersey to "Westminster Choir School, a corp. of Princeton, NJ." Stio Cert., Ex. B. Ms. Taylor was actively involved with WCC in Ohio before the school moved to Ithaca. Vazquez Compl. ¶ 168. Given her lifelong commitment to Presbyterian and evangelical institutions, Ms. Taylor imposed a restrictive covenant on the deed. The covenant stated:

> The premises hereby conveyed shall be used . . . for the purpose of training Ministers of Music for 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 principles of the Westminster Confession of Faith. . . . This covenant shall run with the land and be binding upon [Westminster], its successors and assigns. 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 and vest in [Seminary].
>
> [Vazquez Stio Cert., Ex. B.]

WCC then moved to Princeton, where it has since operated as a "residential school of higher education and conservatory training." Vazquez Compl. ¶ 158.

"Conservatory music education, including Westminster's educational program, is designed intentionally to focus and concentrate conservatory students in an exclusive educational and training program in which students and faculty in other disciplines are not normally present . . . ." Id. ¶ 44. "Unlike conventional college students, conservatory students (including plaintiffs) engage in continuous classroom work throughout the day, generally from 8 AM through 6 PM, with practice and rehearsal dominating their schedule until generally 9-10 PM each evening." Id. ¶ 47. The Westminster campus has numerous specialized facilities to provide conservatory training, including five major performing venues, approximately 45 faculty studios with grand pianos, and 150 practice rooms.

Id. ¶¶ 76,77, 83, 87. WCC's practice facilities are "constructed intentionally of hard surfaces to allow vocal and instrumental feedback for musicians training in the non-amplified orchestral, choral, and operative performance fields." Id. ¶ 89. The Westminster campus also holds the Talbot Library, one of the largest music libraries in the country, equal in size to the libraries at institutions such as Julliard and the Cincinnati Conservatory. Id. ¶¶ 132, 139. The school is a major training center in the musical arts and has performance contracts with the New York Philharmonic, the Philadelphia Orchestra, Carnegie Hall, Julliard, and the Spoleto Festival.

## II. WCC Merges with Rider University in 1991

WCC operated as a 501(c)(3) entity and a degree-granting institution certified by the State of New Jersey. Id. ¶ 158. Defendant Rider University is a not-for-profit, private university with its primary campus located in Lawrenceville, New Jersey. In 1991, WCC, in financial distress, approached Princeton Theological Seminary ("PTS") about a merger. The Seminary declined, and WCC and Rider University negotiated the merger of the two schools.

To effectuate the merger, Rider, WCC, and PTS entered into numerous agreements. PTS sought to disclaim any interest in the property that it may have held because of the Taylor deed by conveying its executory interest to WCC. On May 16, 1991, WCC and the Seminary signed an agreement (hereinafter the "WCC-Seminary Agreement") in which PTS agreed to "release, assign and convey any and all rights, interests and estates it may hold in the property" to WCC in exchange for a fully executed promissory note and mortgage. WCC-Seminary Agreement ¶¶ 1-2. The Agreement further provides: "In the event that litigation is instituted to quiet title or to challenge the title of Westminster in the Property for

any reason, the Seminary shall . . . support and defend the rights and obligations of the parties . . ." Id. ¶ 6. Lastly, WCC and PTS explicitly barred any third-party beneficiaries to the Agreement: "Nothing contained in this Agreement shall be deemed to create rights in persons not parties hereto, other than the successors and assigns of the parties hereto." Id. ¶ 13.

On June 28, 1991, WCC and Rider University merged. They executed a Merger Agreement, which provided that "WCC shall merge into Rider pursuant to the New Jersey Non Profit Corporation Act (the "Merger") with the intention of continuing the purposes of WCC, in accordance with this Agreement." Merger Agreement § 1.3. In exchange for WCC's cooperation, the Agreement obligated Rider to (a) "Preserve, promote and enhance the existing missions, purposes, programs and traditions of WCC," (b) "Ensure that the separate identity of WCC, its programs and activities and its faculty will be recognized," (c) "Utilize WCC's resources in support of WCC's programs and provide such additional funds as may be necessary from time to time," and (d) "Assume the responsibilities for the obligations, financial liabilities, and daily management of affairs of WCC including the supervision and management of all of WCC's real and personal property." Merger Agreement § 2.1. The Agreement also states:

> the parties agree that, notwithstanding anything to the contrary in this Agreement, Rider shall not be obligated to continue any specific programs of WCC, or to continue to operate or maintain the existing WCC campus, if it determines, in good faith, that such continued action would be substantially impracticable or would substantially adversely affect the affiliated or merged institutions.
>
> [Merger Agreement § 2.3.]

Like the WCC-Seminary Agreement, the Merger Agreement provides that the parties intended the agreement to create no intended third-party beneficiaries to the contract. Section 8.4 states: "This agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement shall not create any rights in or be enforceable by any other person."

On June 30, 1992, PTS transferred ownership to WCC via quitclaim deed. Stio Cert., Ex. F. The transfer was made in the sum of $1, with the purpose to "release, relinquish, extinguish, terminate and/or convey all of Grantor's rights . . . contained in that certain deed of conveyance from Sophia Strong Taylor, widow, to Westminster Choir School." Ibid. After the transfer, Rider signed the Assumption Agreement to assume WCC's financial obligations to PTS. Stio Cert., Ex. G.

## III. Rider Attempts to Sell WCC

In June 2018, Rider University announced its intent to sell WCC to Kaiwen Education Technology Co., Ltd. ("Kaiwen"). Vazquez Compl. ¶¶ 25, 57. The announcement had immediate consequences. Before the announced sale, WCC had a $2.5 million surplus and a full incoming class of 95 undergraduate and 18 graduate students. Id. ¶ 26. After the announcement, the Fall 2018 incoming class declined to 25 students. Id. ¶ 27. Plaintiffs allege that WCC's junior and senior classes are the only full class sizes in the school. Id. ¶ 54 ("As a result of Rider's attempt to sell Westminster, the Choir College now only has two full size classes (the junior and senior class years) and has two classes that are three-quarters diminished and 60% diminished (the current sophomore and freshman classes, respectively)."). In 2019, Rider abandoned the sale of WCC to Kaiwen.

## IV. Rider Announces its Plan to Combine the Campuses at the Lawrenceville Campus

On July 1, 2019, Rider announced that it was moving WCC to Rider's Lawrenceville campus. Id. ¶ 72. Rider plans to complete the move by September 2020. Ibid. Plaintiffs argue that the move "will materially damage and destroy the Westminster conservatory" because the Lawrenceville campus does not have the same specialized facilities and Rider does not intend to build such facilities. Id. ¶ 74. The Lawrenceville campus only has a single auditorium, used largely by the musical theatre program, and a small theatre in the student center. Id. ¶¶ 78, 80. The limited facilities that exist will be shared across the University's student body. Id. ¶ 80. Additionally, Rider has announced that it will expand Gil Chapel, build 16 practice rooms, and provide temporary office space for WCC faculty. Id. ¶ 101.

## V. Litigation Commences regarding Rider's Plans for WCC

### A. Related Litigation

Since Rider announced the possibility of a sale of WCC to Kaiwen, various plaintiffs, including the present plaintiffs, have filed seven legal actions. First, on June 20, 2017, McMorris v. Rider was filed in the Southern District of New York seeking to enjoin Rider from any transfer of WCC. On May 22, 2018, the court denied plaintiffs' application for injunctive relief, acknowledging Rider's "substantial financial difficulties" and finding that the injunction "would impose substantial hardship on Rider, which could further imperil both Rider and the WCC." Plaintiffs later withdrew their complaint. In the District of New Jersey, members of the faculty union sought to enjoin Rider from selling or closing WCC until related arbitration could take place. The court denied the injunction based on financial

impracticability, finding that Rider was acting in good faith. A second arbitration action was filed on behalf of the faculty, but the arbitrator issued an award finding that "the Plan to close and 'teach out' the Westminster Choir College was permissible and is pursuant to a demonstrated financial need to protect the well-being of the University." Stio Cert. Ex. I, at 47. PTS instituted the fourth legal action against Rider, which remains pending, in which the Seminary seeks to obtain declaratory relief pertaining to its promissory note or, in the alternative, the validity of its shifting executory interest in the Taylor deed.

### B. The Present Litigation

These two cases complete the set of recent and pending litigation regarding the future of WCC. In Vazquez v. Rider, Plaintiffs are a group of seventy-one Westminster Choir College ("WCC") undergraduate and graduate students challenging the relocation. In McMorris, Plaintiffs are a group of faculty members, former board members, alumni, and donors similarly challenging Rider University's decision. Plaintiffs, collectively, emphasize that the music conservatory and specialized facilities now used for the training of liturgical music, opera, and choral performance will be lost because no comparable or equivalent facilities exist on the Lawrenceville campus. Both complaints rely upon the Taylor Deed, Merger Agreement, WCC-Seminary Agreement, and the Assumption Agreement to bar the move.

To the extent that the complaints overlap, Plaintiffs claim that: (1) the proposed move of WCC "eliminate[s] Westminster as a Music Conservatory," and violates *cy pres* principles and legal doctrine governing charitable foundations; (2) Rider abrogated and abandoned its stewardship duties "as the Charitable Successor to the Endowment and

Property of Westminster;" (3) the proposed move endangers the donations, donative purposes, and intent of contributions, and "Violates Westminster and Rider's Representatives that Induced such Donations to Build the Future College at the Princeton Campus for Westminster's Program and Purposes;" (4) "Rider May Not Retain Funds from the Sale of Westminster's Campus to Reimburse Itself for Funding Westminster's Operating Deficits;" (5) the "Strong Taylor Covenant as to the Residuary Interest of Seminary and Continuing duty of Westminster to Continue the Conditions of the Grant" remains valid; (6) "The Provisions of the Westminster-Seminary Agreement Vacating the Residuary Conveyance to Seminary are Contrary to the Purposes and Intent of the Strong Taylor Grant and Trust;" and (7) "Rider is Obligated to Operate Westminster in a Manner Consistent with the Strong Taylor Grant." Both complaints also seek an accounting of Rider's liens, injunctive relief, and Reinstatement of the Westminster Choir College Corporation and Board. Count VII of the McMorris complaint also seeks the appointment of a receiver.

The McMorris complaint named the Attorney General as a Defendant. The Court requested that the Attorney General's Office explain its position on the proposed transaction. The Office has a duty to enforce and protect public charities, and to ensure that a charitable corporation is properly managing and spending its assets under the Nonprofit Corporation Act. See March 27, 2019 Letter at 2. In a submission to the Court on March 27, 2019, the Acting Attorney General opined that "Taylor's donation of land to WCC created a charitable trust with WCC as the Trustee." Ibid. "How strongly Taylor believed in using the Taylor Property for the purpose of training ministers of music and in teaching the Bible to WCC students is reflected in the fact that Taylor included the same conditions in a

1935 Codicil to her Will." Id. at 10. Further, the Acting Attorney General opined that PTS has a shifting executory interest, id. at 2, and that "PTS' attempts in 1950 and in 1992 to relinquish its shifting executory interest and convey such interest to WCC were void as a matter of law. PTS therefore retains its shifting executory interest in the Trust." Id. at 3. Regarding a move or sale of WCC, the letter opines that Rider, as trustee of the property, has the authority to sell or dispose of the property. Id. at 18. However, "[t]he proceeds of any sale would remain in Trust . . . WCC's $19 million endowment fund should not be included as part of the Proposed Transaction absent a separate *cy pres* proceeding to determine how the donors' intent will be honored and protected." Id. at 4. The March 27, 2019 letter concludes by stating that that the Office did not obtain enough information from Rider to provide a recommendation as to whether the Court should approve the Proposed Transaction, approve it with express conditions, or reject it.[2] Id. at 34.

On November 19, 2019, the Attorney General's Office submitted a second opinion to the Court. In this report, the Acting Attorney General concludes that WCC is not a charitable trust but the Trustee, and that the Taylor Trust consists of the Princeton property and the buildings thereon. Nov. 19, 2019 Letter at 2. Because the school is not a charitable trust, she opines that: "the remedy for Rider's alleged failure to abide by its obligations under the 1991 Agreement of Merger cannot be found in the principles governing charitable trusts, but rather must be found – if at all – in the law of contracts of quasi-contracts." Id. at 11 (citing Beukas v. Bd. of Trs. of Fairleigh Dickinson Univ., 255 N.J. Super. 552 (Law. Div.

[2] A stipulation of dismissal was filed on October 21, 2019, dismissing the complaint against the Attorney General without prejudice.

1991)). She further opines that "the Taylor Trust does not prohibit the proposed move, but rather speaks only to the potential consequences thereof." Id. at 7. Regarding the Attorney General's responsibility to oversee non-profit charitable corporations, the Office states: "following its 1992 merger with Rider, WCC no longer exists as a separate non-profit corporation. The Attorney General's oversight responsibilities, therefore, do not extend to WCC as a discrete entity, but rather to Rider University as a whole." The Attorney General concludes that it is unable to determine whether a *cy pres* proceeding is needed "until Rider's post-move plans for the Princeton campus become clearer" and "until Rider definitively determines what programs will be transferred to Lawrenceville and the form these programs will take."[3] Id. at 12.

Defendant now moves to dismiss Plaintiffs' complaints for failure to state a claim. Defendant argues: (1) Plaintiffs lack standing to enforce their claims; (2) the Taylor Deed does not prevent the relocation of WCC; (3) claims pertaining the sale of the property are premature; (4) any claim that the WCC-Seminary Agreement is void *ab initio* is untimely; and (5) the counts for accounting, reinstatement of the board, and injunctive relief are remedies rather than causes of action. More specifically, Defendant maintains that Plaintiffs lack

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[3] In Howard Sav. Institution v. Peep, the Supreme Court explained that "the doctrine of *cy pres* is a judicial mechanism for the preservation of a charitable trust when the accomplishment of the particular purpose of the trust becomes impossible, impracticable or illegal." 34 N.J. 494, 500-501 (1961). Courts recognize "the social benefit deriving from the devotion of property to charitable purposes" and "are guided by the policy of preserving charitable trusts whenever possible . . . ." Id. at 501. Under those circumstances, "if the settlor manifested an intent to devote the trust to a charitable purpose more general than the frustrated purpose, a court, instead of allowing the trust to fail, will apply the trust funds to a charitable purpose as nearly as possible to the particular purpose of the settlor." Id. at 500-501; see also Sharpless v. Religious Soc., 228 N.J. Super. 68, 75 (App. Div. 1988) (defining *cy pres*).

standing to bring claims under the WCC-Seminary Agreement, Merger Agreement, and Assumption Agreement because they are not parties to the contracts or third-party beneficiaries. Defendant also contends that Plaintiffs lack standing to enforce the Taylor Deed because they are not named in the deed or part of the chain of title and do not have a "special interest" in its enforcement. Standing arguments aside, Defendant argues that the Taylor Deed only imposes restrictions on the property and does not prevent Rider from moving WCC's programs to Lawrenceville. Separately, in the McMorris motion, Defendant also argues that federal labor law deprives this Court jurisdiction of the workplace claims by faculty Plaintiffs.

Plaintiffs oppose Defendant's motions. Plaintiffs argue that New Jersey's liberal standing doctrine grants them standing to seek judicial intervention to bar the move of WCC, the sale of its campus, and/or the diversion or wastage of its assets. In both papers, Plaintiffs rely heavily on cases such as Paterson v. Paterson General Hospital, 97 N.J. Super. 514 (Chan. Div. 1967), to assert a "special interest" in the charitable trust or charitable corporation that is WCC. Plaintiffs argue that higher education is a matter of public importance, of which they only need a slight additional private interest to establish standing. Student and alumni Plaintiffs further contend that they have standing as intended beneficiaries of Rider and WCC. To overcome Defendant's statute of limitations argument, Plaintiffs claim that it does not apply to contracts that are void *ab initio*. Plaintiffs also argue that Defendant's arguments regarding ripeness fail given Defendant's substantial steps taken to sell the property. In McMorris, Plaintiffs argue that federal labor law does not preclude the faculty claims because the claims rely on state charities law rather than the parties'

Collective Bargaining Agreement. The CBA is not central to Plaintiffs' claims nor are the claims "substantially dependent" on its analysis. Lastly, Plaintiffs ask the Court to consider the additional remedies as part of the other claims.

In reply, Defendant argues that Plaintiffs' oppositions fail to remedy the complaints' legal deficiencies. In McMorris, Defendant first argues that Plaintiffs, by way of the certifications submitted in opposition, seek to introduce new allegations not found within their Second Amended Complaint. That procedural infirmity aside, Defendant argues that Plaintiffs' supplemental certifications still fail to establish standing. Defendant argues that Paterson does not assist Plaintiffs because the Paterson plaintiffs were intended beneficiaries and the Attorney General's oversight was sparse. Defendant contends that Plaintiffs here are not intended beneficiaries and the Attorney General is actively involved. Further, Defendant reiterates that (1) Plaintiffs do not have contractual standing, (2) the statute of limitations applies to the contract claim, (3) the National Labor Relations Act and Section 301 of the Labor Management Rights Act preempts Plaintiffs' claims, (4) Counts V, VI, and VIII are remedies that are not cognizable claims, and (5) the Court's jurisdiction is unnecessary given the Attorney General's ongoing review.

In Vazquez, Defendant argues that Plaintiffs concede that the Taylor deed does not prevent the relocation of WCC. Defendant asserts that Plaintiffs rely upon cases in which the Attorney General was not involved, and that in this case, the Attorney General agrees with Defendant's interpretation of the deed.[4] Defendant further contends that Plaintiffs lack

[4] As Defendant's counsel emphasized at oral argument, Defendant does not agree with all the Acting Attorney General's conclusions.

contractual standing as intended beneficiaries and through the special interest standing doctrine. Defendant cautions that courts have repeatedly rejected a student's ability to challenge the school's management decisions. Defendant then reiterates that (1) even if Plaintiffs have standing, the Agreements do not prevent WCC's relocation to the Lawrenceville campus; (2) Count VIII is barred by the statute of limitations; and (3) Plaintiffs' claims challenging the sale are premature. Defendant also argues that Plaintiffs concede that Counts V, VI, and VII are not causes of action.

## VI. Legal analysis

In determining whether a plaintiff has failed to state a claim upon which relief can be granted under Rule 4:6-2(e), the Court limits its examination to evaluating the legal sufficiency of the facts alleged on the face of the complaint.[5] Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (citing Rieder v. Dep't of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987)). The Court "searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Ibid. (citing DiCristoforo v. Laurel Grove Memorial Park, 43 N.J. Super. 244, 252 (App. Div. 1957)). The Court is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint at this preliminary stage of the litigation; therefore, plaintiffs are entitled to

[5] The Court afforded the parties' experienced and most capable counsel some leeway to go beyond the pleadings during oral argument. But expanding the scope of permissible argument in order to provide a richer context does not change the parameters or scope of this Court's review under Rule 4:6-2(e). The Court also did not consider submissions received outside of the moving or responding papers unless otherwise requested by the Court.

every reasonable inference of fact. Ibid. (citing Indep. Dairy Workers Union v. Milk Drivers Local 680, 23 N.J. 85, 89 (1956)). In short, "the test for determining the adequacy of a pleading [is] whether a cause of action is 'suggested' by the facts." Ibid. (citing Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)). "The examination of a complaint's allegations of fact required by the aforestated principles should be one that is at once painstaking and undertaken with a generous and hospitable approach." Ibid.

If the complaint states no basis for relief, dismissal of the complaint is appropriate: "[d]iscovery is intended to lead to facts supporting or opposing a legal theory; it is not designed to lead to formulation of a legal theory." Camden Cty. Energy Recovery Assocs., L.P. v. DEP, 320 N.J. Super. 59, 64 (App. Div. 1999). Thus, "if the complaint states no claim that supports relief, and discovery will not give rise to such a claim, the action should be dismissed." Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 107-08 (2019) (citing Rezem Family Assocs., LP v. Borough of Millstone, 423 N.J. Super. 103, 113 (App. Div. 2011); Camden Cty. Energy Recovery, 320 N.J. Super. at 64-65). The Court may dismiss some of the counts without dismissing the entirety of the case. See Jenkins v. Region Nine Housing, 306 N.J. Super. 258 (App. Div. 1997). However, dismissals "should be granted in only the rarest of instances." Printing Mart-Morristown, 116 N.J. at 772.

Ordinarily, a dismissal for failure to state a claim is without prejudice, and the court has the discretion to permit a plaintiff to amend the complaint to allege additional facts to state a cause of action. Hoffman v. Hampshire Labs, Inc., 405 N.J. Super. 105, 116 (App. Div. 2010). Complaints should not be dismissed if the facts suggest a potential cause of

action that may be better articulated by an amendment of the complaint. Printing Mart-Morristown, 116 N.J. at 746.

In both actions, Defendant first argues that Plaintiffs lack standing to enforce the Taylor Deed and three agreements at issue: the WCC-Seminary Agreement, the Assumption Agreement, and the Merger Agreement. Standing refers to a litigant's "'ability or entitlement to maintain an action before the court.'" Triffin v. Somerset Valley Bank, 343 N.J. Super. 73, 80 (App. Div. 2001) (quoting N.J. Citizen Action v. Rivera Motel Corp., 296 N.J. Super. 402, 409 (App. Div. 1997)). "Whether a party has standing is 'a threshold justiciability determination,' neither subject to waiver nor conferrable by consent." DEP v. Exxon Mobil Corp., 453 N.J. Super. 272, 291 (App. Div. 2018) (internal citation omitted and citing In re Adoption of Baby T., 160 N.J. 332, 341 (1999)). "[A] lack of standing . . . precludes a court from entertaining any of the substantive issues for determination." Baby T., 160 N.J. at 340.

New Jersey jurisprudence has traditionally applied a more liberal approach to standing than its federal counterpart. People for Open Gov't v. Roberts, 397 N.J. Super. 502, 509 (App. Div. 2008) (citing Crescent Park Tenants Ass'n v. Realty Equities Corp., 58 N.J. 98, 101 (1971)). Under this State's general principles of standing, a party "must present a sufficient stake in the outcome of the litigation, a real adverseness with respect to the subject matter, and a substantial likelihood that the party will suffer harm in the event of an unfavorable decision." In re Camden Cty., 170 N.J. 439, 449 (2002). As the Appellate Division has explained:

> The "essential purpose" of the standing doctrine in New Jersey is to "assure that the invocation and exercise of judicial power in a given case are appropriate. Further, the relationship of plaintiffs to the subject matter 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."
>
> [Trifflin v. Somerset Valley Bank, 343 N.J. Super. 73, 80 (App. Div. 2001) (quoting State Chamber of Commerce v. Election Law Enf't Comm'n, 82 N.J. 57, 69 (1980).]

The "standing rules serve to preclude actions initiated by persons whose relation to the dispute may be described as 'total strangers or casual interlopers,' a threshold we have described as 'fairly low.'" People For Open Gov't, 397 N.J. Super. at 509 (quoting Triffin, 343 N.J. Super. at 81). "'[I]n cases of great public interest, any 'slight additional private interest' will be sufficient to afford standing.'" Id. at 510 (quoting Salorio v. Glaser, 82 N.J. 482, 491 (1980)). In People For Open Government, the plaintiffs had a "slight additional private interest" because they "were members of the Committee of Petitioners who participated in the successful effort to gather the signatures necessary to place the initiative petition on the ballot, which ultimately led to enactment of the Ordinance." 397 N.J. Super. at 511-12. The panel thus concluded that plaintiffs therefore had a slight but sufficient special or private interest in seeing the ordinance enforced.

Given the liberal and low threshold to satisfy standing requirements, this Court concludes that the student Plaintiffs have standing to bring suit, even if, in some instances, they do not have standing to bring specific claims. Higher education is a matter of public importance, see Shelton College v. State Bd. of Educ., 48 N.J. 501, 509 (1967), in which Plaintiffs, as students, have a "slight private interest." Plaintiffs are not "interlopers or intermeddlers in this endeavor." Ibid. at 511. In Vazquez, Plaintiffs are all current students who chose to attend WCC because of the opportunities and facilities that WCC provided to

them. The Westminster campus has five different performance venues that are structurally and acoustically specialized for non-amplified piano, organ, voice, choral and operatic training. Pl. Compl. ¶¶ 76-79. By contrast, Rider has only one auditorium and a small theater, neither designed for non-amplified voice, that will be shared across the campus. ¶¶ 75, 79-80. Plaintiffs allege that Rider has no plan to construct comparable facilities on the new campus. ¶ 81. Further, the Westminster campus has 45 faculty studios each containing at least one grand piano, ¶ 83, and 150 practice spaces for students' continuous use, ¶ 87. Rider has planned for temporary faculty space in a dormitory, not studios, and plans to construct only 16 practice spaces. ¶¶ 84, 88. Students will be required to seek space off campus. Given the differences between the two campuses and the September 2020 projected move, the alleged harm is not speculative, and the students have a "slight private interest" in maintaining the Westminster campus.

In McMorris, Plaintiffs allege that they are "intimately and intricately entwined in Westminster and its academic, cultural, and financial life in a manner unique to them and distinct from other alumni and the general public." Through the Westminster Alumni Council and Leadership Council that Rider created, as well as by other means, Plaintiffs allege that Rider has afforded them significant involvement in WCC management issues, such as donor fundraising, the search for a new dean of WCC, the 2018 sale itself, and the student recruitment.

The breadth of backgrounds and interests among the Plaintiffs in McMorris require the Court to distinguish among them in considering standing. The Court finds that Faculty Plaintiffs have a slight but sufficient private interest to establish standing. Plaintiffs allege

that following the announcement of the Kaiwen sale in June 2018, Westminster's entering enrollment went from average entering classes of 95 undergrads and 50 graduate students to 25-25 undergraduates and 18 graduate students. McMorris Compl. ¶¶ 46, 49. Plaintiffs contend that the "loss of students, choral places and fundraising from the defunct plan to sell or move Westminster has caused material wastage to its goodwill, its mission, and the ability to carry out the purposes and the reputation and function of Westminster." Id. ¶ 56. Based on the information provided in the pleadings, as the Court is constrained to do, the Court concludes that Faculty Plaintiffs' relationship with the subject matter of the litigation satisfies the essential purpose of the standing doctrine. Therefore, the Court denies Defendant's request to dismiss the complaint for lack of standing with respect to those Plaintiffs.

However, the Court does not find that the separate donor and alumni Plaintiffs have standing to bring a claim. Persuasive authority from other jurisdictions has declined to afford college alumni groups standing when those groups seek to challenge college policies. See Ad Hoc Comm. of Baruch Black & Hispanic Alumni Ass'n v. Bernard M. Baruch Coll., 726 F. Supp. 522, 524 n.4 (S.D.N.Y. 1989) ("[A]lumni groups have no standing to challenge college policies in a court of law because they lack a concrete interest in those administrative practices."); In re Milton Hershey Sch., 911 A.2d 1258, 1263 (Pa. 2006) ("Standing is not created through the Association's advocacy or its members' past close relationship with the School.... The trust did not contemplate the Association, or anyone else, to be a 'shadow board' of graduates with standing to challenge actions the Board takes."); Tishok v. Dep't of Educ., 133 A.3d 118, 123 (Pa. Commw. Ct. 2016) ("An individual's status as a graduate of an

educational institution does not give her standing to challenge changes in the educational institution's practices, structure or governance in court."). The Court recognizes the attachment alumnae may feel for their alma mater but does not find that such an attachment, without more, confers standing. Further, the Court finds that the donors do not have an interest in the suit beyond their contributions to the school. As stated by the Court in Ludlam v. Higbee, "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." 11 N.J. Eq. 342, 347 (Ch. 1857). No allegations in the McMorris complaint raise the donors above the "mere fact of contribution."

Plaintiffs also argue that they have standing to bring a claim because "no other parties exist to effectively represent the issues at stake." Vazquez Opp. at 22. Here, Plaintiffs rely upon Howard Savings Institution v. Peep, 34 N.J. 494 (1961), arguing that standing is required in cases where the Attorney General's public view of issues differs from the private interests of those who benefit from the trust and are otherwise unrepresented. Id. at 23. Under this rationale, Plaintiffs allege that they have standing in this case. Ultimately, however, Plaintiffs' reliance on Howard Savings is misplaced. In Howard Savings, the parties did not dispute the executor's ability to bring the initial suit in Chancery. Indeed, given the refusal of Amherst to accept the funds given the restrictions placed upon them, the executor had little choice. Rather, the respondent challenged the executor's right to appeal. Id. at 498 ("At the outset, the Board of Trustees of Amherst disputes the executor's standing to appeal."). Here, Plaintiffs rely upon language in the case that concerns standing for

purposes of appealing a final judgment, not bringing the initial suit. See id. at 499 ("We think that under the circumstances the executor is entitled to a definitive judgment by an appellate court, and we therefore hold that it has standing to prosecute this appeal as the representative of the testator."). Thus, the case does not, as Plaintiffs suggest, compel this Court to conclude that Plaintiffs have standing to enforce the Taylor trust.

Plaintiffs' "special interest" standing to challenge the relocation or sale depends on their assertion that WCC is a charitable trust. "A suit can be maintained for the enforcement of a charitable trust by the Attorney General or other public officer, or by a co-trustee, or by a person who has a 'special interest' in the enforcement of the charitable trust, but not by persons who have no special interest or by the settlor or his heirs, personal representatives, or next of kin." First Camden Nat'l Bank & Trust Co. v. Hiram Lodge No. 81, Free Masons, 134 N.J. Eq. 303, 308 (Ch. Div.) (quoting Restatement (Second) of Trusts, § 391), aff'd o.b., 135 N.J. Eq. 505 (E. & A. 1944); see also Hagaman v. Bd. of Educ., 117 N.J. Super. 446, 454 (App. Div. 1971) (same); Di Cristofaro v. Laurel Grove Mem'l Park, 43 N.J. Super. 244, 250 (App. Div. 1957) (same).

Plaintiffs rely on Paterson v. Paterson General Hospital, 97 N.J. Super. 514, 517 (Ch. Div. 1967), to argue the special interest standard applies. Id. at 518. In Paterson, plaintiffs sought to bring claims against the defendant, Paterson General Hospital, challenging the relocation of the hospital. The court determined that the hospital operated as a corporation with a charitable purpose:

> In my opinion defendant is not, strictly speaking, a charitable trust. It is, rather, a charitable corporation, governed by the law applicable to charitable corporations. To some extent this body of doctrine has its roots in the law of trusts, to some extent in the

> law of corporations; to some extent it may partake of both or indeed be sui generis.
>
> [Ibid.]

The court ultimately concluded that the laws of corporations govern questions of relocation. Ibid. Further, the Court rejects Plaintiffs' argument that Paterson should be interpreted as broadly as may be suggested by the Restatement (Third) of Trusts. The New Jersey Supreme Court has not yet adopted the Restatement (Third) and the Court declines to do so here where it would effectuate a change of state law from that pronounced in First Camden National Bank & Trust Co. See Tannen v. Tannen, 416 N.J. Super. 248, 272 (App. Div. 2010) (observing that, as a lower court, panel declined to "presume to adopt the Restatement (Third) of Trusts as the law of this state"), aff'd o.b., 208 N.J. 409 (2011).

Plaintiffs' many claims that are premised on WCC being a charitable trust fail, because, as the Attorney General opines, WCC is not a trust and Rider is not a trust. "A trust may be created by transfer of property under a written instrument to another person as trustee during the settlor's lifetime . . . ." N.J.S.A. 3B:31-18. Here, Ms. Strong Taylor transferred the twenty-eight acres of Princeton property to WCC, the trustee, by deed. A charitable trust is formed so long as the settlor has the capacity and intent to form a trust; it has a charitable purpose; "the trustee has duties to perform; and the same person is not the sole trustee and sole beneficiary of all beneficial interests." N.J.S.A. 3B:31-19. A trust is charitable if it is "created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purpose the achievement of which is beneficial to the community." N.J.S.A. 3B:31-22.

Here, the parties do not dispute that Ms. Taylor had the capacity and intent to form a trust. The parties assert that the trust advances both education and religion. Ms. Strong Taylor also imposed duties on the trustee, WCC, to maintain the trust property "for the purpose of training Ministers of Music for Evangelical Churches" and required that "the Bible [ ] be taught to the whole school at least one hour per week in accordance with principles of the Westminster Confession of Faith." Vazquez Stio Cert., Ex. B. Thus, the charitable trust is the land itself.

Rider is a non-profit corporation that holds charitable assets in trust, including the property granted by the Strong Taylor deed and will. WCC was a non-profit corporation under N.J.S.A. 15A:1-1 before the merger and currently exists under a separate non-profit corporation, Rider University. N.J.S.A.15A:1-2 ("'Corporation,' as it is used in the Act, means '"a nonprofit corporation incorporated under this act, or existing on its effective date and organized under any law of this State . . . for purposes for which a corporation may be organized under this act."' ). Thus, as was the case in Paterson, the law of corporations applies to the present matters. Indeed, the Merger Agreement memorialized that both entities were operating under the authorities granted to them in the Nonprofit Corporations Act.

The Nonprofit Corporations Act defines broadly the purposes of a nonprofit:

> including, without being limited to, any one or more of the following purposes: charitable; benevolent; eleemosynary; ***educational***; cemetery; civic; patriotic; political; religious; social; fraternal; literary; cultural; athletic; scientific; agricultural; horticultural; animal husbandry; volunteer fire company; ambulance, first aid or rescue; professional, commercial,

> industrial or trade association; and labor union and cooperative purposes.
>
> [N.J.S.A.15A:2-1(emphasis added).]

The Nonprofit Corporations Act authorizes nonprofit corporations to "make contracts and guarantees and incur liabilities, borrow money, issue its bonds, and secure any of its obligations by mortgage of or creation of a security interest in its property, franchises and income." N.J.S.A.15A:3-1. In this respect, nonprofit corporations have the same right to contract as for-profit corporations. Compare with N.J.S.A.14A:3-1.

Although WCC may have been created for a charitable purpose, it was a non-profit entity. And Rider is, as well. Although Defendant and the Attorney General take different positions regarding the present existence of the deed's shifting executory interest granted to PTS, that is an issue for another day, and not one necessary to the disposition of Defendant's motions to dismiss. Therefore, Plaintiffs would have to argue that they have a "special interest" in the land itself, which is held in trust, rather than the school. Plaintiffs do not argue that they have a special interest in the land, nor would such an allegation establish a claim to prevent the relocation.

Defendant then argues that Plaintiffs fail to state a claim because the express language of the Taylor Deed does not prevent the relocation of WCC. Instead, Defendant alleges that the deed only places restrictions on the property. Defendant seeks to dismiss Counts I, IX, and X of the Vazquez complaint, and presumably Counts I, III, IX of the McMorris complaint. Student Plaintiffs' allege in their complaint that "Strong Taylor gave her gift to Westminster to advance the 'training of Ministers of Music of Evangelical Churches' with the condition that the school continue to carry out such purposes and activities." Vazquez

Compl. ¶ 167. In the McMorris Complaint, Plaintiffs argue that if WCC violates the covenant "to use the lands and buildings for the teaching of liturgical music and the training of ministers of music then the lands and buildings must pass to and vest in Princeton Theological Seminary." McMorris Compl. ¶ 140. Plaintiffs contend that Ms. Strong Taylor used these two organizations because of their common Presbyterian faith. Id. ¶ 141. Further, Plaintiff argues that "Rider has obligations to continue the operation of Westminster Choir College in substantially the same format and location as it presently exists under common law and separately, under Rider's 1991 Merger Agreement unless Rider can demonstrate under *cy pres* principles" that the move preserves the school's charitable purposes and the school's program and mission in the closest means possible. Id. ¶ 124.

Plaintiffs' claims and arguments, again, conflates WCC with the Taylor Deed's trust concerning the property. The Taylor Deed creates a trust in the property, rather than the school, and does not prevent the relocation of WCC. Although the acreage was gifted to the school, the restrictive covenant runs with the land. Stio Cert., Ex. B. ("This covenant shall run with the land and be binding upon [Westminster], its successors and assigns.").

Plaintiffs' claims then rely upon their ability to enforce the three agreements. While a party may have standing to maintain an action before this Court, Stubaus v. Whitman, 339 N.J. Super. 38, 47 (App. Div. 2001), a party may still lack standing to assert a cause of action. Here, Defendant asserts that Plaintiffs lack contractual standing because they were neither parties nor third-party beneficiaries. The Court agrees. As the Court explained in Ross v. Lowitz, "[w]hen a court determines the existence of 'third-party beneficiary' status, the inquiry '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.'" 222 N.J. 494, 513 (2015) (quoting Broadway Maint. Corp. v. Rutgers, 90 N.J. 253, 259 (1982)). Many years ago, this State's highest court explained why the parties' intention is "the determining factor:"

> The determining factor as to the rights of a third party beneficiary is the intention of the parties who actually made the contract. They are the persons who agree upon the promises, the covenants, the guarantees; they are the persons who create the rights and obligations which flow from the contract. The statute merely provides a means of legal procedure when once it has been determined who has an actionable right under the agreement. Thus, the real test is whether the contracting parties intended that a third party should receive a benefit which might be enforced in the courts; and the fact that such a benefit exists, or that the third party is named, is merely evidence of this intention.
>
> [Borough of Brooklawn v. Brooklawn Hous. Corp., 124 N.J.L. 73, 77 (E. & A. 1940).]

Stated another way, a third-party only has a cause of action based on a contract if it was an intended third-party beneficiary. Rieder Cmtys v. N. Brunswick, 227 N.J. Super. 214, 222 (App. Div. 1988).

The Court cannot and does not conclude that the parties to the relevant agreements intended to benefit Plaintiffs. As separate non-profit corporations in 1991, WCC and Rider University were free to make their own contracts regarding the merger of the two schools. Plaintiffs do not have the ability to challenge the contract that was created. Plaintiffs are clearly not parties to the Agreement, and Plaintiffs are not intended third-party beneficiaries because the agreements evidence the clearest intention of the signatories that they intended to create no such beneficiaries. Ross, 222 N.J. at 513. Section 8.4 of the Merger Agreement

explicitly protects against the argument Plaintiffs are trying to make: "This agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement shall not create any rights in or be enforceable by any other person." Thus, Plaintiffs cannot bring a claim to enforce any of its contractual provisions.

Regardless, the Merger Agreement anticipated the possibility of a relocation or sale of WCC. Section 2.3 of the Merger Agreement expressly states: "Rider shall not be obligated to continue any specific programs of WCC, or to continue to operate or maintain the existing WCC campus, if it determines, in good faith, that such continued action would be substantially impracticable or would substantially adversely affect the affiliated or merged institutions." As the owner of WCC, Rider University is free to make those business decisions so long as it does not act arbitrarily. For example, in Beukas v. Board of Trustees of Fairleigh Dickinson University, the court examined students' abilities to challenge a university's decision to terminate a program:

> applying quasi-contract theory to resolving university student conflicts over an administrative decision to terminate a college or program for financial reasons is the most effective way to avoid injustice to both the university and its students. The judicial inquiry should be directed toward the bona fides of the decision-making and the fairness of its implementation: whether the institution acted in good faith and dealt fairly with its student body should be the polestar of the judicial inquiry.
>
> [255 N.J. Super. at 568.]

See also Peretti v. Montana, 464 F. Supp. 784, 787 (D. Mont. 1979) ("Certainly in the period of time between a student's matriculation and graduation, an educational institution, which is a living, changing thing, may not reasonably be expected to remain static; and, conversely,

change may reasonably be expected."), rev'd, 661 F.2d 756, 759 (9th Cir. 1981) (reversing on grounds of sovereign immunity). Although the McMorris Plaintiffs allege that the "loss of students, choral places and fundraising from the defunct plan to sell or move Westminster has caused material wastage to its goodwill, its mission, and the ability to carry out the purposes and the reputation and function of Westminster," Compl. ¶ 56, they do not allege that Defendant is acting in bad faith. Plaintiffs do contend that "[n]o material and exigent economic condition at Westminster exists to substantiate the abandonment of these facilities, the campus and/or the master plan." Id. ¶ 87. However, without allegations of arbitrariness or bad faith, the Court is reluctant to involve itself with Defendant's business judgment. See Green Party v. Hartz Mountain Indus., 164 N.J. 127, 147 (2000) ("The business judgment rule . . . [is] a means of shielding internal business decisions from second-guessing by the courts . . . [W]hen business judgments are made in good faith based on reasonable business knowledge, the decision makers are immune from liability from actions brought by others who have an interest in the business entity.").

Although Plaintiffs argue that non-profit corporations that hold charitable assets in trust are constrained by those trust assets in ways not enumerated in statute or caselaw, this Court rejects that unsupported assertion. After the merger of WCC and Rider, WCC ceased to exist as a separate entity. See N.J.S.A.15A:10-6(b) ("The separate existence of all parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease."). To the extent that Plaintiffs are concerned with the trust property after the merger, the law provides that all "real and personal property shall be and remain subject to any trusts on which it may have been theretofore held." N.J.S.A.15A:10-6(d). The Princeton property

may remain subject to the trust, but WCC, which no longer exists as a separate non-profit corporation, has no such restrictions.

Next, Defendant alleges that the Court should dismiss Counts III and VIII of the Vazquez complaint, seeking declaratory and injunctive relief related to the sale of the property, are premature because there is no sale in place. In response, Plaintiff argues that the claims are ripe because Defendant has already established its intent to sell the property and because Defendant, under the terms of the Taylor Deed/Trust, has no right to sell the property. Plaintiff refers to the terminated sale of WCC to Kaiwen, arguing that Defendant has already taken substantial steps to sell the property. Moreover, the relief sought under these counts exceed just barring the sale. The declaratory relief sought under Count III includes "barring the move of Westminster to Rider's Lawrence campus" and "barring the sale of the Westminster campus." Count III pleadings address the current Westminster endowment, which includes donations for the benefit and use of WCC only. Plaintiffs allege that Defendant will use the proceeds of the sale solely for its own benefit rather than committing the proceeds to WCC's programs, purposes, of replicating its facilities. Vazquez Compl. ¶ 261.

Count VIII discusses the Seminary's executory interest. Id. ¶¶ 292-93. The declaratory relief sought under Count VIII requests that the Court declare (1) Rider does not have fee simple title to the campus and the campus remains encumbered by the trust, (2) the WCC-Seminary Agreement is void *ab initio* for failure to obtain judicial approval, and (3) that the parties be returned to their respective positions before the WCC-Seminary Agreement. Similarly, Count IX of the McMorris complaint asks this Court to declare that (1) Rider does

not possess fee simple title to the Campus and the campus remains encumbered by the trust, and (2) that the WCC-Seminary Agreement is void *ab initio* for failure to obtain judicial approval. None of these requests address the sale of the property. However, Plaintiffs do not have a cause of action to enforce the Agreement because they are neither parties nor intended beneficiaries of the Agreement. Thus, Counts III and VIII of the Vazquez complaint and Count IX of the McMorris complaint fail to state a claim regardless of whether the statute of limitations applies.

Defendant argues that the Court should dismiss Count VII of the McMorris complaint because Plaintiffs do not have standing to bring a receivership action. Defendant is correct in this assertion. The New Jersey Nonprofit Corporation Act limits the categories of persons who can bring receivership actions to:

> a creditor whose claim is for a sum certain or for a sum which can by computation be made certain; (2) a member or members who individually or in combination constitute at least 10% of the members of any class of members of the corporation; (3) the corporation, pursuant to resolution of its board; or (4) the Attorney General.
>
> [N.J.S.A.15A:14-2.]

Plaintiffs do not fall under any of these categories. Therefore, the Court dismisses Count VII of the McMorris complaint.

Defendant argues that in McMorris, Faculty Plaintiffs' claims are preempted by federal labor law. Defendant alleges that Plaintiffs' claims regarding appropriate facilities fall under the Collective Bargaining Agreement and are therefore preempted by Section 301 of the Labor Management Rights Act which governs "suits for violation of contracts between an employer and a labor organization representing employees." 29 U.S.C. § 185(a).

Plaintiffs refute this argument by bringing their claims under independent state law governing charities, rather than asserting a breach of the Collective Bargaining Agreement. Here, Plaintiffs are not bringing claims "founded directly on rights created by collective-bargaining agreements" or "claims 'substantially dependent on analysis of a collective-bargaining agreement.'" Caterpillar, Inc. v. Williams, 482 U.S. 386, 394 (1987) (quoting Electrical Workers v. Hechler, 481 U.S. 851, 859, n. 3 (1987)). Plaintiffs' claims here do not require "interpretation or application of the collective bargaining agreement," and therefore do not arise under § 301. Id. at 391.

The Court reaches the same conclusion regarding federal preemption under the NLRA. At this stage in the proceedings, Plaintiffs' claims focus on the charitable trust and Rider's legal ability to move WCC. Plaintiffs do not allege unfair labor practices or that Rider refused to collectively bargain with them regarding the terms of their employment. Additionally, Defendant does not specify which of Plaintiffs' claims should be preempted. The claims are brought by all Plaintiffs, and not all Plaintiffs are faculty members. Therefore, Defendant's motion to dismiss based on preemption is denied. However, the Court dismisses Faculty Plaintiffs' claims on the grounds previously mentioned. Moreover, in their own submissions, Plaintiffs rely upon state charities law to overcome preemption. The Court has already concluded that the law of corporations applies to the school's relocation, and the fact that Rider may hold some charitable assets in trust does not substantially alter the analysis.

Lastly, Defendant asserts that Counts V (Accounting), VI (Injunctive Relief), and VII (Reinstatement of the Westminster Choir College Corporation) of the Vazquez complaint

and Counts VIII (Reinstatement of the Westminster Choir College Corporation), IX (Declaratory Judgment and Injunctive Relief), and XI (Declaratory Judgment and Injunctive Relief) of the McMorris complaint should be dismissed because they state remedies rather than claims for relief. Plaintiffs request that the Court consider those requests as a natural flow from the asserted claims. The Court dismisses these counts, finding that they state claims for relief rather than causes of action. See Stio Cert. Ex. K at 26:24-37:13 (dismissing similar counts in the PTS v. Rider complaint for stating remedies rather than claims).