[Cite as *Barga v. Ohio State Univ.*, 2026-Ohio-3248.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Jack Barga et al.,	:	
Plaintiffs-Appellants,	:	No. 26AP-179 (C.P.C. No. 25CV-259)
v.	:	(REGULAR CALENDAR)
The Ohio State University,	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on August 20, 2026

On brief: *Law Office of David A. Bressman*, *Jeddidiah I. Bressman*, and *David A. Bressman*, for appellants. **Argued**: *Jeddidiah I. Bressman*.

On brief: [*Andy Wilson*], Attorney General and *Stacy Hannan*; *Vorys*, *Sater*, *Seymour and Pease LLP*, *Marcel C. Duhamel*, *Andrew P. Guran*, *Garrett M. Anderson*, and *Celina J. Needle*, for appellee. **Argued**: *Marcel C. Duhamel.*

APPEAL from the Franklin County Court of Common Pleas

EDELSTEIN, J.

{¶ 1} Plaintiffs-appellants, Jack Barga and more than 100 other individuals, appeal from a decision and entry of the Franklin County Court of Common Pleas granting the motion to dismiss of defendant-appellee, The Ohio State University ("OSU"). For the following reasons, we affirm.

I. Facts and Procedural History

{¶ 2} Appellants are a group of students and parents of students who attended OSU and lived in Lawrence Tower,[1] one of OSU's student dormitories. (First Am. Compl. at ¶ 1, 3.) When they enrolled, appellants entered into a contract with OSU for their accommodations at Lawrence Tower ("housing contract"). (First Am. Compl. at ¶ 21-22.) As first-year students, appellants were required to live on campus in dormitories owned by OSU. (First Am. Compl. at ¶ 31.) The housing contract states students and parents "are making a commitment for, and agreeing to pay for, services in one of the Housing and Residence Education residence halls, apartments or properties" (Housing Contract, Ex. B at 1), OSU will provide "sanitation and repairs" in the dormitories, and OSU may enter student dormitories for "improvements, maintenance, cleaning . . . and safety inspections as necessary for the health and general welfare of all residents." (First Am. Compl. at ¶ 25-26; Housing Contract, Ex. B at 13-14, 17.)

{¶ 3} During the 2024-2025 academic year, some residents of Lawrence Tower reported "feeling sick but did not understand why they were feeling sick." (First Am. Compl. at ¶ 6.) Appellants alleged that in November 2024, residents of Lawrence Tower reported mold growing behind the wallpaper. (First Am. Compl. at ¶ 7-9.) Appellants alleged "it was found that Lawrence Tower suffered from a moisture problem that allowed for the growth of mold and likely endotoxins and legionella." (First Am. Compl. at ¶ 10.)

{¶ 4} On January 13, 2025, appellants filed a complaint against OSU asserting violations of the Consumer Sales Practices Act ("CSPA"). Specifically, appellants alleged (1) OSU falsely represented Lawrence Tower was safe upon move-in; (2) OSU falsely represented Lawrence Tower was safe after making repairs; and (3) OSU concealed moisture, mold, asbestos, and other bacteria from residents of Lawrence Tower. (Compl. at ¶ 31-33; First Am. Compl. at ¶ 45-47.) In response to the original complaint, OSU filed a Civ.R. 12(B)(6) motion to dismiss on March 13, 2025. OSU argued the Supreme Court of Ohio's decision in *Heritage Hills, Ltd. v. Deacon*, 49 Ohio St.3d 80 (1990), precluded application of the CSPA to residential lease transactions. Because Ohio's Landlord-Tenant Act specifically covers student housing leases, OSU argued the Landlord-Tenant Act governed appellants' allegations.

[1] Throughout the proceedings, appellants refer to the dormitory as both Lawrence Tower and Lawrence Hall, using the names interchangeably.

{¶ 5} After OSU filed its motion to dismiss, appellants filed their First Amended Complaint on March 24, 2025. Appellants attached the housing contract between OSU and residents of Lawrence Tower and added allegations to their complaint related to OSU's provision of "services" under the housing contract. (First Am. Compl. at ¶ 37-40.) OSU then renewed its motion to dismiss on April 7, 2025, again arguing the CSPA is not applicable to residential lease transactions and nothing in appellants' amended complaint rendered their allegations anything other than a dispute under the Landlord-Tenant Act. (Renewed Mot. to Dismiss at 9-11.) Appellants responded in an April 21, 2025 memorandum contra asserting the housing contract was a "mixed transaction" for real estate and collateral services to which the CSPA applied. (Memo Contra at 5.) Appellants' memorandum contra asserted OSU promises a "residential curriculum" as part of its housing contract. (Memo Contra at 7.) Appellants asserted that, when OSU "knowingly exposes its students to hazardous conditions while continuing to require and charge for mandatory on-campus housing[,] a student does not have the ability to sleep, read[,] and study[] free from undue interference[] and other distractions." (Memo Contra at 7.) OSU filed a reply on April 25, 2025 noting appellants did not reference a "residential curriculum" in their First Amended Complaint and, even if they did, the allegations did not change the fundamental nature of the claims as a landlord-tenant dispute.

{¶ 6} On June 23, 2025, while the motion to dismiss was pending, appellants filed a motion for leave to amend their First Amended Complaint. Appellants did not submit their proposed second amended complaint but included the new allegations in the body of their motion to amend. The proposed additional language consisted of 16 paragraphs relating to the "residential curriculum" OSU offers to student residents. Appellants alleged in their motion that OSU promised to provide a residential curriculum as an extension of its educational services. Additionally, appellants alleged OSU "promised" to provide accommodations "free from undue interference, unreasonable noise, and other distractions[]" and "a clean-living environment." (Mot. for Leave to Amend at 4.) OSU opposed the motion to amend, arguing the proposed amendments would not cure the legal deficiencies in appellants' CSPA claims because the underlying allegations still related to the residential lease.

{¶ 7} In a February 13, 2026 decision and entry, the trial court denied appellants' motion to amend their complaint and granted OSU's motion to dismiss. The court determined appellants' CSPA claims were based on the landlord-tenant relationship

between OSU and appellants, noting the underlying basis of the claims was OSU's "inadequate maintenance and failure to provide safe housing." (Decision and Entry at 2.) Despite appellants' efforts to characterize the agreement as a services contract, the court found Ohio's Landlord-Tenant Act specifically contemplates the types of services underlying appellants' allegations. Thus, finding appellants failed to state a claim for a CSPA violation, the court determined dismissal under Civ.R. 12(B)(6) was required. The court also determined the proposed additional 16 paragraphs would not convert appellants' claims into alleged violations of the CSPA and, thus, the amendment would be futile. Appellants timely appeal.

II. Assignments of Error

{¶ 8} Appellants raise the following three assignments of error for our review:

> [I.] The trial court erred as a matter of law in holding that *Heritage Hills*[, *Ltd.*] *v. Deacon*, 49 Ohio St.3d 80 (1990), categorically bars all CSPA claims arising from mandatory university housing when the housing is inextricably intertwined with educational services and marketed by the university as an educational component.
>
> [II.] The trial court abused its discretion in denying Plaintiffs leave to file a Second Amended Complaint, misapplying the Civ.R. 15(A) standard by requiring Plaintiffs to prove the ultimate merits of their CSPA claim rather than make a prima facie legal showing that the proposed amendments, if proven true, could state a cognizable claim.
>
> [III.] The trial court erred as a matter of law in finding on a Civ.R. 12(B)(6) motion that the student housing contract "falls squarely within the confines of Ohio's Landlord-Tenant Act," thereby precluding any CSPA claim, when the court failed to accept Plaintiffs' well-pled allegations as true and failed to analyze whether this was a mixed real estate and services transaction subject to CSPA under *Brown v. Liberty Clubs*[, *Inc.*, 45 Ohio St.3d 191 (1989)].

For ease of discussion, we address appellants' assignments of error out of order.

III. First and Third Assignments of Error – Motion to Dismiss

{¶ 9} Appellants' first and third assignments of error are interrelated, and we address them jointly. In their first assignment of error, appellants argue the trial court erred in holding *Heritage Hills*, 49 Ohio St.3d at 80, bars their CSPA claim. In their third assignment of error, appellants argue the trial court erred in finding the student housing

contract fell within Ohio's Landlord-Tenant Act and precluded any CSPA claim. Taken together, these assignments of error assert the trial court erred in granting OSU's motion to dismiss.

{¶ 10} A motion to dismiss for failure to state a claim upon which relief can be granted under Civ.R. 12(B)(6) is a procedural test of a civil complaint's sufficiency. *Cool v. Frenchko*, 2022-Ohio-3747, ¶ 13 (10th Dist.), quoting *Morrow v. Reminger & Reminger Co., L.P.A.*, 2009-Ohio-2665, ¶ 7 (10th Dist.). Dismissal of a complaint pursuant to Civ.R. 12(B)(6) is appropriate "only if it appears beyond a [reasonable] doubt that the plaintiff can prove no set of facts entitling the plaintiff to recovery." *Bullard v. McDonald's*, 2021-Ohio-1505, ¶ 11 (10th Dist.). In determining whether dismissal is appropriate, the trial court "must presume all factual allegations contained in the complaint [as] true and must make all reasonable inferences in favor of the plaintiff." *Id.* "The court need not, however, accept as true any unsupported and conclusory legal propositions advanced in the complaint." *Id.* When deciding a Civ.R. 12(B)(6) motion, a court may not consider factual allegations or evidence outside of the complaint. *See, e.g., State ex rel. Scott v. Cleveland*, 2006-Ohio-6573, ¶ 26.

{¶ 11} We review a trial court's dismissal pursuant to Civ.R. 12(B)(6) de novo. *State ex rel. Ohio Civ. Serv. Emps. Assn. v. State*, 2016-Ohio-478, ¶ 12, citing *Perrysburg Twp. v. Rossford*, 2004-Ohio-4362, ¶ 5. Our review is limited to the allegations contained in the complaint. *See, e.g., Schmitz v. Natl. Collegiate Athletic Assn.*, 2018-Ohio-4391, ¶ 10, citing *Loveland Edn. Assn. v. Loveland City School Dist. Bd. of Edn.*, 58 Ohio St.2d 31, 32 (1979).

{¶ 12} Appellants' First Amended Complaint set forth claims for violations of the CSPA. The CSPA protects Ohio consumers from an "unfair or deceptive act or practice in connection with a consumer transaction." R.C. 1345.02(A). The CSPA defines a "consumer transaction" as "a sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, franchise, or an intangible . . . to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things." R.C. 1345.01(A). Appellants argue their First Amended Complaint sufficiently alleged the housing contract with OSU included the promise of services covered by the CSPA and, thus, the trial court erred in dismissing their claims.

{¶ 13} As the trial court noted, the Supreme Court of Ohio has expressly held residential leases are excluded from the CSPA. In *Heritage Hills*, the Supreme Court held that because R.C. Chapter 5321, Ohio's Landlord-Tenant Act, contains an explicit statutory

scheme for resolving landlord-tenant disputes, the CSPA is not applicable to residential leases. *Heritage Hills*, 49 Ohio St.3d at 83 ("we hold that R.C. Chapter 1345 (Consumer Sales Practices Act) does not apply to residential lease transactions"). Appellants acknowledge *Heritage Hills* but argue the trial court erred in relying on it because, in their view, *Heritage Hills* applies only when the ***sole*** subject of the dispute is a residential lease transaction. Appellants assert the housing contract here represents a "mixed transaction" for both housing and services and, as such, the Supreme Court's earlier decision in *Brown v. Liberty Clubs, Inc.*, 45 Ohio St.3d 191 (1989), controls. Through this argument, appellants misconstrue both *Heritage Hills* and *Brown*.

{¶ 14} In *Brown*, the Supreme Court held the CSPA "is applicable to the personal property or services portion of a mixed transaction involving both the transfer of personal property or services and the transfer of real property." *Brown* at syllabus. Though appellants assert *Brown* should control over *Heritage Hills* to allow their CSPA claims to go forward, these two cases are not in conflict with one another. While *Brown* is clear that the CSPA can be applicable to the personal property or services portion of a mixed transaction, nothing in *Brown* extends the CSPA to the residential lease portion of a mixed transaction. The Supreme Court decided *Heritage Hills* after *Brown*, confirming the CSPA has no application to the residential lease portion of a mixed transaction. *See Morrison v. Skestos*, 2004-Ohio-6985, ¶ 13-14 (10th Dist.) ("The CSPA has no application . . . to the real estate itself, which is not included in CSPA's definition of a consumer transaction."). The trial court correctly explained the interplay of these two cases in its decision, and appellants even acknowledge in their brief the complementary nature of these two cases. Thus, appellants' argument that the holding in *Heritage Hills* is limited to "pure" residential lease transactions lacks merit. (Appellants' Brief at 15.)

{¶ 15} Appellants argue they sufficiently alleged the housing contract here is not solely a residential lease but a mixed transaction for both housing and services. However, even if we were to conclude appellants sufficiently alleged the housing contract constitutes a mixed transaction, the mere existence of a mixed transaction is not sufficient to bring any and all claims stemming from the mixed transaction within the purview of the CSPA. *Heritage Hills* at 82-83; *Brown* at syllabus; *Morrison* at ¶ 14 (no error in dismissing claims premised on a violation of the CSPA in a mixed transaction for the transfer of real property and the construction of a house where the claims alleged defects in the real property, not in the defendants' construction of the house). Our inquiry, instead, is the nature of appellants'

allegations. If the allegations relate to the residential lease, the CSPA does not apply and dismissal is warranted, even if it is a mixed transaction. If, on the other hand, the allegations relate to services or personal property, the CSPA may apply.

{¶ 16} In considering the allegations in a complaint, creative framing "does not alter the essential nature of the action." *Greenspan v. Third Fed. S. & L. Assn.*, 2009-Ohio-3508, ¶ 9. " 'As [the Supreme Court] has long recognized, the substance of the subject matter of a case is determinative, not the form under which a party chooses to bring it.' " *Id.*, quoting *Motorists Mut. Ins. Co. v. Huron Rd. Hosp.*, 73 Ohio St.3d 391, 394 (1995). *See also Love v. Port Clinton*, 37 Ohio St.3d 98, 99 (1988), quoting *Hambleton v. R.G. Barry Corp.*, 12 Ohio St.3d 179, 183 (1984) (" 'courts must look to the actual nature or subject matter of the case, rather than to the form in which the action is pleaded. The grounds for bringing the action are the determinative factors, the form is immaterial' ").

{¶ 17} In their First Amended Complaint, appellants specifically alleged OSU violated the CSPA by (1) "falsely representing that Lawrence Hall was safe upon move-in"; (2) "falsely representing that Lawrence Hall was safe after each individual repair was completed at Lawrence Hall"; and (3) "concealing the moisture, mold, asbestos, and other bacteria." (First Am. Compl. at ¶ 45-47.) From the face of their First Amended Complaint, it is clear appellants' allegations relate directly and exclusively to the condition of the premises and OSU's alleged failure to maintain or repair the premises in accordance with the terms of the lease. Appellants assert their allegations reach beyond the conveyance of real property under the residential lease and cover the services OSU voluntarily agreed to render under the housing contract, including agreeing to maintain and repair the premises. However, the Landlord-Tenant Act specifically contemplates such services as falling under a residential lease. *See* R.C. 5321.04(A)(1) through(4) ("A landlord who is a party to a rental agreement shall . . . [c]omply with the requirements of all applicable building, housing, health, and safety codes that materially affect health and safety; . . . [m]ake all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition; . . . [k]eep all common areas of the premises in a safe and sanitary condition; . . . [and] [m]aintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, and air conditioning fixtures and appliances."). Thus, appellants' allegations relate solely to the residential lease and OSU's obligations as appellants' landlord. As we explained above, and as the trial court correctly explained in its

decision, the CSPA does not apply to residential leases and, thus, does not apply to appellants' allegations. *Heritage Hills*, 49 Ohio St.3d at 82-83.

{¶ 18} Appellants make various arguments as to why the CSPA nonetheless should apply to their claims, including that (1) the housing contract is more properly understood as a component of OSU's educational services, (2) OSU requires on-campus housing as part of its educational services, (3) OSU voluntarily chooses to provide maintenance services rather than hiring a third-party to perform the services, and (4) students are vulnerable consumers who need the protection of the CSPA. None of these arguments alter the fundamental nature of the allegations in appellants' First Amended Complaint relating exclusively to the residential lease portion of the parties' relationship. Appellants cannot establish a claim for relief by attempting to reframe the landlord-tenant relationship as a contract for educational services. *Greenspan* at ¶ 9; *Love* at 99. We also note the Landlord-Tenant Act specifically covers student housing and does not limit its application to whether student housing is mandatory or voluntary. R.C. 5321.01(C) (" 'Residential premises' includes a dwelling unit that is owned or operated by a college or university."); R.C. 5321.01(H) (" 'Student tenant' means a person who occupies a dwelling unit owned or operated by the college or university at which the person is a student, and who has a rental agreement that is contingent upon the person's status as a student."). Thus, appellants' status as student tenants does not bring their claims within the purview of the CSPA.

{¶ 19} Appellants also attempt to avoid application of *Heritage Hills* by arguing that case was wrongly decided. We must reject this argument. "As an intermediate appellate court, we are bound to follow precedent set by the Supreme Court of Ohio and we cannot issue a decision in conflict with a decision of the Supreme Court that has not been reversed or overruled." *State v. Tatom*, 2018-Ohio-5143, ¶ 24 (10th Dist.), citing *Three-C Body Shops, Inc. v. Nationwide Mut. Fire Ins. Co.*, 2017-Ohio-1462, ¶ 31 (10th Dist.), *State ex rel. Cordell v. Pallet Cos., Inc.*, 2014-Ohio-5561, ¶ 7 (10th Dist.), and *Wagner v. Ohio State Univ. Med. Ctr.*, 2013-Ohio-2451, ¶ 102 (10th Dist.). We are not permitted to ignore Supreme Court precedent and we find *Heritage Hills* to be dispositive of the issue.

{¶ 20} Finally, we do not agree with appellants that the trial court failed to accept appellants' factual allegations as true. Instead, even construing appellants' factual allegations as true, and even assuming the relationship between appellants and OSU constitutes a mixed transaction, the court appropriately looked to the nature of appellants' allegations and determined appellants' allegations related solely to the landlord-tenant

relationship between the parties. Though appellants assert OSU provided a broad range of services to appellants, the factual allegations in their complaint are limited to the landlord-tenant relationship and do not explain how any of OSU's conduct constituted a violation of the CSPA.

{¶ 21} Here, the trial court appropriately considered OSU's motion to dismiss, accepted appellants' factual allegations as true, and determined appellants' claims related solely to the residential lease portion of the parties' relationship. Following *Heritage Hills*, the CSPA does not apply to residential leases. Thus, the court correctly determined appellants can prove no set of facts warranting recovery against OSU under the CSPA. Accordingly, the court did not err in granting OSU's Civ.R. 12(B)(6) motion to dismiss appellants' first amended complaint for failure to state a claim. We overrule appellants' first and third assignments of error.

IV. Second Assignment of Error – Motion for Leave to Amend Complaint

{¶ 22} In their second assignment of error, appellants argue the trial court abused its discretion in denying their motion for leave to file a second amended complaint.

{¶ 23} Pursuant to Civ.R. 15(A), "[a] party may amend its pleading once as a matter of course" within 28 days after service of a Civ.R. 12(B) motion. Otherwise, a party may amend its pleadings only with the written consent of the opposing party or by leave of court. Civ.R. 15(A). We review a trial court's decision to grant or deny a motion for leave to amend a pleading for an abuse of discretion. *RotoSolutions, Inc. v. Crane Plastics Siding, L.L.C.*, 2013-Ohio-4343, ¶ 14 (10th Dist.); *Watchman v. Meijer, Inc.*, 2004-Ohio-6440, ¶ 20 (10th Dist.), citing *Geo-Pro Serv., Inc. v. Solar Testing Laboratories, Inc.*, 145 Ohio App.3d 514, 529 (10th Dist. 2001), citing *State ex rel. Askew v. Goldhart*, 75 Ohio St.3d 608, 610 (1996). An abuse of discretion connotes a decision that is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983); *State ex rel. Deblase v. Ohio Ballot Bd.*, 2023-Ohio-1823, ¶ 27.

{¶ 24} A trial court "shall freely give leave [to file an amended complaint] when justice so requires." Civ.R. 15(A). However, denial of a motion for leave to amend a complaint is appropriate if the amendment would be futile. *Harris v. Cunix*, 2022-Ohio-839, ¶ 8 (10th Dist.); *Kromer v. Arthritis Found., Inc.*, 2025-Ohio-661, ¶ 28 (10th Dist.).

{¶ 25} Here, appellants sought leave to file a second amended complaint to include 16 additional paragraphs related to OSU's "residential curriculum," including an allegation that the housing contract is a component of OSU's broader educational services contract.

Even accepting the proffered allegations as true, nothing in these allegations addresses the deficiencies in appellants' CSPA claims. We agree with appellants that the existence of a residential curriculum would support their contention that the housing contract constitutes a mixed transaction. However, as we explained in our resolution of appellants' first and third assignments of error, even construing the parties' relationship as a mixed transaction, the allegations specific to the residential lease portion of the mixed transaction remain exempt from the CSPA. The proposed 16 additional paragraphs do not alter the nature of appellants' allegations against OSU: a dispute regarding the condition of the premises arising under a residential lease covered by Ohio's Landlord-Tenant Act and, pursuant to *Heritage Hills*, not subject to the CSPA. Thus, we agree with the trial court that the amendment would have been futile. Therefore, the court did not abuse its discretion in denying appellants' motion for leave to file a second amended complaint. *Kromer* at ¶ 31 (where "amendment of the complaint could not endow [the plaintiff] with capacity to obtain the relief he wants," the trial court did not abuse its discretion in denying leave to amend "because amendment would be futile").

{¶ 26} We overrule appellants' second assignment of error.

V. Disposition

{¶ 27} Based on the foregoing reasons, the trial court did not err in granting OSU's motion to dismiss appellants' complaint alleging violations of the CSPA, and the court did not abuse its discretion in denying appellants' motion for leave to file a second amended complaint. Having overruled appellants' three assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BOGGS, P.J., and MENTEL, J., concur.
