[Cite as *Habegger v. Owens Community College*, 2015-Ohio-5563.]

Court of Claims of Ohio
The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

TIFFANY HABEGGER, et al.
Plaintiffs

v.

OWENS COMMUNITY COLLEGE
Defendant

AND

CARIANNE BAIRD, ET AL.
Plaintiffs

v.

OWENS COMMUNITY COLLEGE
Defendant

Case Nos. 2010-07865 and 2011-09187

Judge Patrick M. McGrath

DECISION

{¶1} On April 7, 2014, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B), as to all claims in these consolidated cases. With leave of court, on May 21, 2014, plaintiffs filed a response and a cross-motion for summary judgment as to their claims of breach of contract. With leave of court, on July 7, 2014, defendant filed a combined memorandum in opposition to plaintiffs' cross-motion for summary judgment and a reply in support of its motion for summary judgment. With leave of court, on July 14, 2014, plaintiffs filed a combined reply to defendant's response and a

sur-reply to defendant's reply.[1] The motions for summary judgment are now before the court pursuant to L.C.C.R. 4(D).

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." *See also Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317 (1977).

{¶4} Plaintiffs[2] are former students who were enrolled between 2007 and 2009 in defendant's Registered Nursing (RN) program to obtain an associate's degree at defendant's two campuses in Findlay and Toledo, Ohio. At the time that plaintiffs were enrolled, the RN program was accredited by the National League for Nursing Accreditation Commission (NLNAC). The RN program was also approved by the Ohio Board of Nursing.

{¶5} On March 26, 2007, the NLNAC sent defendant a letter stating that it approved the continuing accreditation of defendant's associate degree nursing program

[1]Inasmuch as the court granted plaintiffs leave to file a response to defendant's reply, and such response was filed on July 14, 2014, plaintiffs' July 11, 2014 motion "to strike new issues raised for the first time in defendant's reply in support of motion for summary judgment" is DENIED.

[2]At the time of this decision, seventy (70) plaintiffs were pursuing claims.

with the condition that defendant submit a follow-up report in two years. (Defendant's Exhibit 3 to affidavit of Renay Scott, PhD.) The follow-up report was to address the standards of both "faculty" and "educational effectiveness." *Id*. The NLNAC advised defendant that after submission of the follow-up report in the spring of 2009, the NLNAC would either continue its accreditation or remove the nursing program from the list of accredited programs. *Id*.

{¶6} On July 30, 2009, the NLNAC issued a letter to defendant notifying it that continuing accreditation of the associate nursing program was denied. (Defendant's Exhibit 4 to affidavit of Scott.) The denial was "based on the NLNAC policy that continuing accreditation is denied to programs with conditions status that are found to be in continued non-compliance with any accreditation standard. The details of the decision put forth by the Commission have been sent to the program's nurse administrator." *Id*. The notice further stated that "[a]n educational program that has been denied initial accreditation status may appeal the decision within thirty (30) days of receipt of notice of such denial by filing a written notice of appeal via hand delivery or certified or registered mail." *Id*. Defendant received the notice on August 4, 2009.

{¶7} Although defendant was made aware of the denial of accreditation on August 4, 2009, plaintiffs contend that defendant failed to issue any formal announcement of the loss of accreditation until September 26, 2009, when it issued a letter to its current nursing students. (Exhibit 18 to plaintiffs' motion for summary judgment.) By that time, classes for fall semester had already started.

{¶8} Plaintiffs assert claims of breach of contract, fraud, and unjust enrichment. With regard to the contract claims, plaintiffs assert that defendant breached an implied contractual obligation to maintain its accreditation status with the NLNAC, and that defendant's breach resulted in damages. With regard to the fraud claims, plaintiffs assert that defendant represented that its RN program was accredited, despite being notified in 2007 that the accreditation was "conditional"; that defendant concealed the

conditional status of accreditation from its students despite a duty to disclose it; and that defendant failed to disclose the loss of accreditation in 2009 in a timely manner, which affected students' abilities to withdraw from classes without financial penalty. With regard to the unjust enrichment claim, plaintiffs assert that they paid tuition, fees, and related costs to defendant to obtain an accredited degree, that they did not obtain an accredited degree, and that defendant has unjustly retained the benefit of their payments. Defendant asserts that plaintiffs cannot prevail on any of their claims as a matter of law.

I. BREACH OF CONTRACT

{¶9} To recover upon a breach of contract claim, a plaintiff must prove "'the existence of a contract, performance by the plaintiff, breach by the defendant, and damage or loss to the plaintiff.'" *Powell v. Grant Med. Ctr.*, 148 Ohio App.3d 1, 7, 2002-Ohio-443 (10th Dist.), quoting *Nilavar v. Osborn*, 137 Ohio App.3d 469, 483 (2nd Dist.2000). It is well-settled that the relationship between a university and a student who enrolls, pays tuition, and attends class is contractual in nature, and that the terms of this contractual relationship may be found in the handbook, catalog, and other guidelines supplied to students. *Bleicher v. Univ. of Cincinnati College of Med.*, 78 Ohio App.3d 302, 308 (10th Dist.1992); *Embrey v. Central State Univ.*, 10th Dist. Franklin No. 90AP-1302 (Oct. 8, 1991).

{¶10} Defendant submitted a copy of its 2008-2010 college catalog. (Defendant's Exhibit 1 to affidavit of Scott.) A description of the Registered Nursing Program appears on pages 222-223, which states: "ACCREDITATION: National League for Nursing Accrediting Commission" and lists an address and telephone number for the Commission. It also states, "Approved by the Ohio Board of Nursing."

{¶11} In that the RN associate degree is a two-year program, the catalog also states: "TRANSFER OPTIONS: Graduates may pursue a bachelor's degree at Bowling Green State University, Lourdes College, Mercy College of Northwest Ohio,

Spring Arbor University or the University of Toledo. Meet with an Enrollment Services representative or the Program Chair for more information." *Id*.

{¶12} Both parties filed cross-motions for summary judgment as to the breach of contract claims. Plaintiffs assert that the language in the catalog which states that the RN program was accredited by the NLNAC implied that the graduates of the program would obtain an accredited degree, and that defendant's loss of accreditation was a breach of contract that resulted in damages. Defendant argues that the terms of the contract did not include a guarantee, either express or implied, that the nursing program would maintain its accreditation status. Furthermore, defendant asserts that even if plaintiffs can prove a breach, NLNAC accreditation did not affect the ability of graduates to sit for a licensing examination, thus, plaintiffs cannot prove that the loss of accreditation resulted in any damages to them as a matter of law.

{¶13} Both parties cite to *Behrend v. State*, 55 Ohio App.2d 135 (10th Dist.1977). In *Behrend*, a group of students was enrolled in a program to earn an accredited degree in architecture at Ohio University (OU). However, the school of architecture lost its accreditation. Although the university made efforts to regain its accreditation, those efforts failed, and eventually the school of architecture was closed. The Tenth District Court of Appeals stated:

{¶14} "The specific nature of the contractual relationship may well vary with the specific situation presented. However, it may be said that where one enrolls in a college or university in order to obtain instruction in a given professional discipline, he or she does so with the reasonable thought that such college or university has been *accredited by the appropriate accrediting agency*.

{¶15} "It is not unreasonable for one matriculating to an institution of higher learning, which offers course materials and degrees in a certain professional field, to assume that the credits for courses taken at such institution, and any degree thereafter

that might be granted, *would qualify the student or the graduate for the appropriate state professional examination*.

{¶16} "* * *

{¶17} "The holding here goes to the issue of whether a student may claim damages when the course materials he or she has taken, and hours of credit toward a degree, *either are not acceptable to another school upon transfer, because of the lack of accreditation, or when the student has graduated but may not take the professional exam without further work or delay, or when the student has been delayed in the process of his transferring to another college or university offering an accredited course* in architecture.

{¶18} "The damages to these students will necessarily vary dependent upon whether or not they were able to transfer credits and, if not, the additional time and expense of taking other courses. Also, there will have to be proof of any pecuniary loss due to delay of those in transferring to other schools, and proof of loss of delay in being able to take the appropriate state professional exams. All of such must be proven by the individual claimant based upon the facts in his or her given case." (Emphasis added.) *Behrend*, at 139-141.

{¶19} Defendant asserts that *Behrend* is distinguishable from these cases because the loss of NLNAC accreditation did not prevent its graduates from obtaining licensure. Defendant contends that inasmuch as its RN program never lost approval from the State Board of Nursing, graduates of defendant's program did, in fact, obtain nursing degrees and retained their eligibility to sit for the national licensing examination. Furthermore, defendant contends that even if it failed to timely notify students of the loss of accreditation, that failure had no impact on current or future students.

{¶20} Defendant filed the deposition of Cathy Learn, Education Regulatory Surveyor for the Ohio Board of Nursing. Learn testified that the Ohio Board of Nursing is the regulatory agency and the NLNAC is an accrediting body. Learn explained that

all nursing programs in Ohio must be approved by the Ohio Board of Nursing in order for graduates to sit for the national licensing exam, known as the NCLEX, either to become licensed as an RN or an LPN. (Learn deposition, p. 41). According to Learn, NLNAC accreditation of a nursing program is not mandatory for a graduate to sit for the NCLEX exam. Rather, accreditation is something that individual nursing schools may pursue as an "add-on." (Learn deposition, pgs. 6-9, 40-42, 48-51.) Learn also testified that when the NLNAC denied continuing accreditation of defendant's RN program, it did not affect either the Ohio Board of Nursing's approval of defendant's nursing program or the ability of defendant's graduates to obtain a nursing license in Ohio or any other state. *Id*.

{¶21} Cynthia Hall, defendant's assistant chair of nursing from October 2004 until 2010, also testified in her deposition that NLNAC accreditation is a voluntary process, and that defendant's nursing program did not need NLNAC accreditation for students to graduate, sit for Boards, or obtain jobs.

{¶22} In addition, the September 26, 2009 letter that was issued to defendant's nursing students from Mathew McIntosh, PhD, Dean of the School of Health Sciences, states the following, in relevant part:

{¶23} "Recently, you may have learned the Nursing program at Owens Community College had lost accreditation with the National League of Nursing Accrediting Commission (NLNAC). Please be reassured that this status has no bearing on several areas:

{¶24} "First, Owens Community College remains accredited by the Higher Learning Commission and the Nursing Program is fully approved by the Ohio Board of Nursing.

{¶25} "Second, nursing candidates are still able to sit tor the NCLEX-RN examination and when passed, will receive the licensure to practice.

{¶26} "Third, students will continue to be provided experiences at local and regional clinical settings.

{¶27} "Fourth, NLNAC accreditation is voluntary, and is not needed for graduates from the program to become employed in Ohio as a registered nurse." (Plaintiffs' Exhibit 18.)

{¶28} Construing the evidence most strongly in plaintiffs' favor, the only reasonable conclusion is that the loss of NLNAC accreditation did not affect plaintiffs' abilities to take the appropriate state licensing exam. Therefore, plaintiffs cannot prove that they suffered any loss with regard to graduating from the program but not being able to take the professional licensing examination.

{¶29} With regard to whether any credit hours that plaintiffs took were not acceptable to another school upon transfer because of the lack of accreditation, Renay Scott, who was Vice Provost for defendant in September 2009, testified that after the accreditation was denied, she contacted the deans of Lourdes College, University of Toledo, Mercy College, and Spring Arbor, who all stated that those institutions would still admit graduates of defendant's program, despite the accreditation loss. The only institution that required anything additional was Lourdes College, whose policy required that students from un-accredited programs take a one-credit orientation course. Scott testified that all students who enrolled in Lourdes' bachelor of nursing program from an un-accredited college or university would have to take the one-hour course. (Deposition of Scott, p. 30).

{¶30} To support their contention that plaintiffs sustained damages as a result of the loss of accreditation by the NLNAC, plaintiffs filed the revised affidavit of Elizabeth Davis, MS, RN, CRRN, CLCP, CRC, their expert in vocational assessments, who averred that she was asked to determine whether certain plaintiffs have suffered a negative earnings impact as a result of graduating with an associate degree in registered nursing from a program that had lost its NLNAC accreditation. According to

her deposition, the only plaintiffs that Davis was asked to render an opinion about were Carianne Baird, Miracle Huffman, Lori Stetler, Cherity Saar, Kelsey Darbyshire and Danielle Seifert.[3] Therefore, the court shall focus on those named plaintiffs for analysis.

{¶31} Davis opined in her revised affidavit that "Carianne Baird, Miracle Huffman, Lori Stetler, and other nursing students have experienced a loss of earnings capacity" due to the loss of accreditation. (June 3, 2014 affidavit of Davis.) With regard to Huffman, Davis stated that she is currently licensed as a Registered Nurse both in Ohio and Michigan; that she took the NCLEX examination to obtain licensure in Ohio, and that her licensure and years of work history as an RN allowed her to obtain her licensure in Michigan by endorsement. With regard to both Stetler and Baird, Davis stated that they are currently employed as Registered Nurses in Ohio, and that their Ohio licensure and years of employment make them eligible to be candidates for licensure by endorsement as an RN in other states. With regard to Baird, Huffman, and Stetler, Davis opined that they have "experienced a loss of earning capacity * * * as some individual employers refuse to give consideration to nurses who possess a non-accredited degree." *Id*. However, Davis also stated that "reductions in available opportunities are highly variable and individualized and thus unable to be calculated within a reasonable degree of professional certainty." *Id*. Davis also stated that plaintiffs have fewer educational advancement opportunities available to them because not all institutions "would allow [them] to freely transfer or apply credits earned via a non-accredited program toward higher learning degrees such as a Bachelor's or Master's Degree in Nursing." *Id*. Davis recommended "corrective action" in the form of "re-education," which she opined would be "two years of education at the community college level in an accredited nursing program or the remainder of credits that would not

[3]Danielle Seifert is no longer a party in this case. (*See* December 21, 2012 entry of partial dismissal in Case No. 2011-09187.)

transfer to an appropriate program." *Id*. Davis also recommended two years of salary that would be lost while these plaintiffs would be enrolled in an accredited program. *Id*.

{¶32} Plaintiffs argue that Davis' testimony shows that issues of fact remain as to whether plaintiffs sustained damages as a result of the loss of accreditation. Defendant argues that plaintiffs' claims of damages are speculative. Although it is arguable that certain plaintiffs could show a claim for damages if the loss of accreditation caused them not to be hired for a position, or if an educational institution denied admission or required additional coursework of them, defendant argues that plaintiffs have not produced evidence showing that there is a genuine issue of fact regarding damages. "To recover for a breach of contract, a claimant must prove damage as a result of the breach." *Leiby v. Univ. of Akron*, 10th Dist. Franklin No. 05AP-1281, 2006-Ohio-2831, ¶ 24.

{¶33} Carianne Baird testified in her deposition that she has neither been denied admission to any further educational program for which she has applied nor been denied any employment for which she has applied as a result of the loss of accreditation. Baird testified that she was accepted into both Wheeling Jesuit College's RN to MSN bridge program and Graceland University's online program, but that she declined to enroll in either program. Baird did enroll in OU's RN to BSN program, but did not complete it. Although Baird testified that The Ohio State University's (OSU) website stated that graduation from a nationally accredited program was required for admission into its RN to BSN program, she did not apply to or contact OSU to determine whether she could be admitted provisionally. Baird also testified that she contacted Frontier University in Kentucky about its online RN to MSN program, and was told that an accredited degree was required for admission, but that she did not apply there.

{¶34} Miracle Huffman testified in her deposition that she graduated from defendant's RN program on July 31, 2009, but that she has not applied for any further

educational programs. According to Huffman she contacted Chamberlain, an online university, to inquire about its BSN program, and was told that her degree from defendant would not be accepted because it was not accredited. However, she also testified that she did not apply to Chamberlain's program, and has no formal letter of rejection.

{¶35} Lori Stetler testified in her deposition that she graduated from defendant in July 2009; that she was informed of the loss of accreditation through the media; that she believes that OSU would not take a non-accredited degree, but that she has not verified that fact; and that she has neither applied anywhere for further education nor been denied any jobs because of the loss of accreditation.

{¶36} Cherity Saar testified in her deposition that she is currently employed as an RN; that she graduated from defendant's program in May 2010; that she enrolled in OU's RN to BSN program in January 2011 but that she left the program in fall 2011. Saar further testified that OU accepted all of her credits and coursework from defendant. Saar stated that she believes that Lourdes College required extra coursework to continue her education but she did not apply there. Saar testified that she has not been rejected from any employment opportunity because of the loss of accreditation.

{¶37} Kelsey Darbyshire testified in her deposition that she graduated from defendant in the fall of 2010 and that she is employed full-time as an RN. Darbyshire stated that she is not pursuing a bachelor's degree at this time and that she has not been denied any employment opportunity because of the lack of accreditation.

{¶38} Construing the facts most strongly in favor of plaintiffs, the only reasonable conclusion is that no plaintiff has brought forth evidence to show that the loss of accreditation resulted in any harm to them. Although plaintiffs presented the testimony of an expert and certain individual plaintiffs, none of them testified that they were rejected from an institution of higher learning for which they applied based upon the

loss of accreditation, that they were denied employment based upon the loss of accreditation, or that they were not permitted to take the NCLEX based upon the loss of accreditation.[4] The only reasonable conclusion is that no plaintiff suffered actual damages as a result of any breach of contract by defendant. Therefore, defendant is entitled to judgment as a matter of law on plaintiffs' breach of contract claims.

II. FRAUD

{¶39} The elements of fraud are: "(a) a representation, or, where there is a duty to disclose, concealment of a fact; (b) which is material to the transaction at hand; (c) made falsely, with knowledge of its falsity, or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred; (d) with the intent of misleading another into relying upon it; (e) justifiable reliance upon the representation or concealment, and (f) a resulting injury proximately caused by the reliance." *Cohen v. Lamko, Inc.*, 10 Ohio St.3d 167, 169 (1984), quoting *Friedland v. Lipman*, 68 Ohio App. 2d 255, (8th Dist.1980) paragraph one of the syllabus.

{¶40} Plaintiffs assert that defendant had a duty to disclose the "conditional" status of the accreditation as stated in the March 26, 2007 letter from the NLNAC. Plaintiffs argue that "continuing accreditation with conditions" is a status that is different than being accredited. To counter this argument, defendant filed the affidavit of Vivian Yates, PhD, who was Associate Director for Program Accreditation Support at the NLNAC from May 2009 through August 2011. Yates avers, in part, as follows:

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[4]In addition, depositions of other plaintiffs filed in this matter show that although certain plaintiffs have not received their nursing licenses or completed their degrees at the time that their depositions were taken, none of them was rejected from employment or denied acceptance from another educational degree program based upon the loss of NLNAC accreditation. *See* depositions of Tabitha Mixon, Christopher Cook, Donna Miller, Amber Gray, Michael Thieman, Jr., Marion Drummer, Tina Martin, Jonathan Brown, Stephanie Matthews, Alisha McCreary, Lisa Ball, Jason Rice, Amy Hollingsworth, David Smith, John Pearson, and Linda Sanislo.

{¶41} "6. NLNAC Policy #9 (which was in effect during the time period from March 2007 to the present, and attached as Affidavit Exhibit 1) requires an institution to accurately cite each nursing program that is accredited, and to include the name, address, and telephone number of the NLNAC. To my knowledge, Owens Community College has never been cited by the NLNAC for inaccurately representing the accreditation status of its nursing program.

{¶42} "* * *

{¶43} "8. The term 'fully accredited' is not one that is recognized by the NLNAC. A nursing program is either accredited or it is not. When an institution receives notification of a formal action by the NLNAC continuing the accreditation of a nursing program with conditions and requiring the submission of a follow-up report after the specified time period, that program is still accredited, and may represent itself as such. Neither the institution nor the program has a duty beyond representing the specific program as accredited and including the name, address, and telephone number of the NLNAC.

{¶44} "9. In practice, institutions that have been granted continuing accreditation with conditions and are required to submit a follow-up report do represent their program as accredited, which is an accurate representation."

{¶45} In addition, defendant filed the deposition of Elise Scanlon, plaintiffs' expert, who testified that that the program was still accredited by the NLNAC when the March 26, 2007 letter was issued. (Scanlon deposition, p. 125.)

{¶46} Construing the facts most strongly in favor of plaintiffs, the only reasonable conclusion is that defendant's RN program was accredited when it received the NLNAC's March 26, 2007 letter, and that any representation that defendant made regarding its accreditation at that time was not false. Therefore, defendant is entitled to judgment as a matter of law on any of plaintiffs' claims of fraud with regard to the status of accreditation as stated in the March 26, 2007 letter.

{¶47} Plaintiffs also assert claims of fraud with regard to defendant's representation of fact in its 2008-2010 catalog that the RN associate program was accredited by the NLNAC. However, it is undisputed that the catalog was published in 2008, when the nursing program was, in fact, accredited, as stated above. In addition, the catalog clearly provided the contact information for the NLNAC. As evidenced in Yates' affidavit, the language in the 2008-2010 catalog complied with Policy #9 of the NLNAC. Moreover, "a claim of fraud cannot be predicated upon promises or representations relating to future actions or conduct." *Hancock v. Longo*, 10th Dist. Franklin No. 98AP-1518, 1999 WL 816148 (Oct. 14, 1999.) (Internal citations omitted.) Construing the facts most strongly in favor of plaintiffs, reasonable minds can conclude only that defendant is entitled to judgment as a matter of law on any claims of fraud with regard to the statements that appear in the 2008-2010 published catalog.

{¶48} Turning to plaintiffs' claims that defendant falsely represented that the program was accredited after receipt of the July 30, 2009 letter, Scanlon testified that defendant had a duty to disclose its loss of accreditation at the earliest on September 4, 2009, which was after the appeal period had run for the denial of accreditation. Scanlon testified that defendant should have made a systematic effort to inform students on September 4, 2009 about the loss of accreditation, and that defendant should have removed the NLNAC reference from all of its course materials, including the college website. Construing the evidence most strongly in plaintiffs' favor, the only reasonable conclusion is that the loss of accreditation became effective on September 4, 2009, when the 30-day period to appeal the NLNAC's decision expired. Therefore, any cause of action as a result of the loss of accreditation could not have arisen prior to September 4, 2009. Accordingly, defendant is entitled to summary judgment as a matter of law on any of plaintiffs' claims that defendant misrepresented the accreditation status of the nursing program prior to September 4, 2009.

{¶49} Finally, with regard to plaintiffs' claims of fraud from September 4 through September 26, 2009, Cynthia Hall testified that she informed nursing faculty of the loss of accreditation in August when she received the letter from the NLNAC, and that she did not advise anyone to not tell students about it. (Deposition of Hall, p. 206.)

{¶50} Gerald Newberry, who was the assistant chair of nursing for defendant, also testified that between the time that Hall received the letter and the date of Dr. McIntosh's letter to the students, he received no written or oral instructions from defendant's administration with regard to what he could or could not say to students regarding the loss of accreditation. (Deposition of Newberry, p. 49.) Newberry also testified that faculty returned to campus on August 10, 2009, and that the nursing students began classes on August 17, 2009. (*Id*. at p. 42.)

{¶51} Hope Hutchison testified that she worked as a secretary for both Hall and Gerald Newberry, and that by the time that the September 26, 2009 letter was issued to students, "everyone already knew it." (Hutchinson deposition, p. 44.) Hutchinson testified that the September 26, 2009 letter was distributed to all nursing students, and that additional copies of the letter were posted in conspicuous places in her office. According to Hutchinson, after fall semester classes had started, the loss of accreditation was announced in the media. Hutchinson also testified that no one at the college told her not to disclose the loss of accreditation; that when classes started in the fall semester, faculty members were talking about the loss of accreditation with students; and that students were asking her about it before the September 26, 2009 letter was issued.

{¶52} Provost Paul Unger, PhD., testified that once the letter from the NLNAC was received on August 4, 2009, he met with Dr. McIntosh, Cindy Hall, and others to try to understand why accreditation was lost, and that his first inclination was to appeal the decision. Unger testified:

{¶53} "We had a discussion and determined that to go out to the students immediately and tell them we lost the accreditation and we have no answers as to the impact of it was not doing anyone justice, so we pursued vigorously and aggressively the three points I gave you; on employment, on clinicals, and on transfer, and once we had answers to those questions, we then held two formal meetings, one in Toledo and one in Findlay, to give students answers in addition to this." (Deposition of Unger, pgs. 42-43.) In addition, Unger stated: "No one told anyone not to divulge [the loss of accreditation] because it's public information, but that was the first time we formally scheduled meetings - a meeting with students so that they could meet with the department and find out about this and the answers to those questions." *Id*.

{¶54} Renay Scott testified that she became Vice Provost for defendant on September 20, 2009, and on that date, she attended a telephone conference with Drs. Unger, McIntosh, and Sharon Tanner, the Executive Director of the NLNAC to discuss how to notify internal and external constituents about the loss of accreditation. According to Scott, Tanner advised the group that it was necessary to review any materials used to promote the program and remove any statements about the registered nursing program being accredited. Scott charged defendant's marketing department with the task of systematically removing any statements about accreditation from materials, including the college website. Scott stated that she created a document within days after September 20, 2009 about the accreditation loss. Scott also created a document for student advisors to explain what the loss of accreditation meant, at some point in time around September 27, 2009.

{¶55} Construing the facts most strongly in favor of plaintiffs, the only reasonable conclusion is that defendant did not conceal the loss of its NCLAC accreditation at any time with the intent of misleading another into relying upon it. Plaintiffs have not brought forth any evidence to show that defendant's employees instructed anyone not to disclose the loss of accreditation with its students. Although plaintiffs have

established that defendant's duty to disclose the accreditation loss accrued on September 4, 2009, evidence in the record shows that nursing classes began on August 17, 2009, before any duty to disclose arose. In addition, Hutchinson and Hall testified that students were aware of the loss of accreditation before the September 26, 2009 formal announcement, and that the media had reported it prior to that time. Indeed, plaintiff's expert Scanlon testified that there was no conspiracy not to disclose information about accreditation loss. (Scanlon deposition, p. 199.) Therefore, defendant is entitled to judgment as a matter of law on plaintiffs' claims of fraud.

III. UNJUST ENRICHMENT

{¶56} "A plaintiff must establish the following three elements to prove unjust enrichment: (1) a benefit conferred by a plaintiff upon a defendant; (2) knowledge by the defendant of the benefit; and (3) retention of the benefit by the defendant under circumstances where it would be unjust to do so without payment." *Alternatives Unlimited-Special, Inc. v. Ohio Dept. of Education*, 10th Dist. Franklin No. 08AP-396, 2008-Ohio-6427, ¶ 22. "However, the doctrine of unjust enrichment does not apply when a contract actually exists; it is an equitable remedy applicable only when the court finds there is no contract." *Id.*, ¶ 23. Inasmuch as the court has found that the parties' relationship was contractual in nature, and that the terms of the contract are found in the course catalog, plaintiffs' claims for unjust enrichment fail as a matter of law.

{¶57} In conclusion, plaintiffs' motion for partial summary judgment shall be denied and defendant's motion for summary judgment as to all claims shall be granted.

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PATRICK M. MCGRATH
Judge

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JUDGMENT ENTRY

{¶58} A non-oral hearing was conducted in this case upon the defendant's motion for summary judgment and plaintiffs' motion for partial summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. Plaintiffs' motion for partial summary judgment is DENIED. All previously scheduled

events are VACATED. Court costs are assessed against plaintiffs. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

_____
PATRICK M. MCGRATH
Judge

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Filed January 7, 2015
Sent To S.C. Reporter 12/31/15