IN THE SUPREME COURT OF FLORIDA

CASE NO: SC23-126

ANTHONY ROJAS,

Petitioner,

v.

UNIVERSITY OF FLORIDA
BOARD OF TRUSTEES,

Respondents.

APPENDIX TO PETITIONER'S BRIEF ON JURISDICTION

ON DISCRETIONARY REVIEW FROM THE DISTRICT
COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

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INDEX TO APPENDIX

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-3430

UNIVERSITY OF FLORIDA BOARD
OF TRUSTEES,

Appellant,

v.

ANTHONY ROJAS, individually
and on behalf of all others
similarly situated,

Appellee.

On appeal from the Circuit Court for Alachua County.
Monica J. Brasington, Judge.

November 22, 2022

NORDBY, J.

We review the trial court's conclusion that sovereign immunity does not bar Anthony Rojas's breach of contract claim against the University of Florida Board of Trustees. Because the assorted documents attached to the complaint do not constitute an express written contract sufficient to overcome sovereign immunity, the trial court should have dismissed the claim. Accordingly, we reverse and remand to the trial court for entry of judgment for the University's Board.

Because state universities and colleges across Florida are facing lawsuits like the one here,[1] we also certify the following question of great public importance to the Florida Supreme Court:

> WHETHER SOVEREIGN IMMUNITY BARS A BREACH OF CONTRACT CLAIM AGAINST A STATE UNIVERSITY BASED ON THE UNIVERSITY'S FAILURE TO PROVIDE ITS STUDENTS WITH ACCESS TO ON-CAMPUS SERVICES AND FACILITIES?

I.

When COVID-19 first impacted Florida in Spring 2020, the State University System Board of Governors directed Florida's public universities to commence online learning. Soon after, the University of Florida instructed its students to leave campus and closed its on-campus facilities. The University remained partially closed during the spring and summer semesters of 2020. During this time, classes were offered online, and students were advised to remain off campus. Yet students were still required to pay various fees along with their tuition (such as an activity and service fee, a health fee, a transportation access fee, and an athletic fee).

This prompted graduate student Anthony Rojas to file a class action complaint against the University. On behalf of all similarly situated students, Rojas alleged that the University's failure to offer on-campus services or refund the related fees for those impacted semesters constituted a breach of contract. He attached several documents to the complaint in support of his claim,

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[1] *See, e.g.*, *Univ. of S. Fla. Bd. of Trs. v. Moore*, 347 So. 3d 545, 549 (Fla. 2d DCA 2022) ("Based on the clear language of the registration agreement, Ms. Moore entered into a legal, binding contract with USF."), *petition seeking discretionary review filed*, *Univ. of S. Fla. Bd. of Trs. v. Moore*. No. SC22-1398 (Fla. Oct. 19, 2022); *Dist. Bd. of Trs. of Miami Dade Coll. v. Verdini*, 339 So. 3d 413, 421 (Fla. 3d DCA 2022) ("Verdini has failed to identify an express, written contractual obligation to prove on-campus or in-person services in exchange for the various fees listed in the Complaint.").

including a Spring 2020 tuition statement, a general statement of tuition and various fee estimates for the 2019–2020 academic year, and a copy of the University's financial liability agreement. Rojas asserted that these documents, in the aggregate, made up an express written contract between him and the University "for specific on-campus resources and services during the Spring and Summer 2020 terms." Rojas also alleged an unjust enrichment claim.

The University moved to dismiss, arguing that both claims were barred by sovereign immunity. The trial court dismissed the unjust enrichment claim but allowed the breach of contract claim to proceed. This appeal followed under Florida Rule of Appellate Procedure 9.130, which authorizes appellate review of non-final orders that deny a motion that "asserts entitlement to sovereign immunity." Fla. R. App. P. 9.130(a)(3)(F)(iii); Art. V, § 4(b)(1), Fla. Const. (providing that district courts of appeal "may review interlocutory orders in such cases to the extent provided by rules adopted by the supreme court").

II.

Because the assorted documents attached to the complaint do not constitute an express written contract sufficient to overcome sovereign immunity, the trial court should have dismissed the breach of contract claim. Our review is de novo. *DeSantis v. Geffin*, 284 So. 3d 599, 602 (Fla. 1st DCA 2019).

Outside of claims brought under the federal or state constitutions, sovereign immunity bars suit against the State.[2] This is an absolute rule with only two exceptions. The first is in

[2] As a common-sense matter, sovereign immunity does not shield the State from constitutional challenges. *See Dep't of Revenue v. Kuhnlein*, 646 So. 2d 717, 721 (Fla. 1994), *as clarified* (Nov. 30, 1994) ("Sovereign immunity does not exempt the State from a challenge based on violation of the federal or state constitutions, because any other rule self-evidently would make constitutional law subservient to the State's will. Moreover, neither the common law nor a state statute can supersede a provision of the federal or state constitutions.").

Florida's constitution itself, which expressly vests the Legislature with the authority to waive the State's immunity by general law. Art. X, § 13, Fla. Const. ("Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.").[3] The second exception is of judicial creation: When the State contracts with a private entity, then "the defense of sovereign immunity will not protect the state from action arising from the state's breach of that contract." *Pan-Am Tobacco Corp. v. Dep't of Corr.*, 471 So. 2d 4, 5 (Fla. 1984).

Certain principles govern each exception. Any legislative waiver of sovereign immunity (under the first exception), "must be clear and unequivocal." *Rabideau v. State*, 409 So. 2d 1045, 1046 (Fla. 1982). It also "must be construed narrowly in favor of the government." *Hardee Cnty. v. FINR II, Inc.*, 221 So. 3d 1162, 1165 (Fla. 2017); *see also Spangler v. Fla. State Tpk. Auth.*, 106 So. 2d 421, 424 (Fla. 1958) ("Inasmuch as immunity of the state and its agencies is an aspect of sovereignty, the courts have consistently held that statutes purporting to waive the sovereign immunity must be clear and unequivocal. Waiver will not be reached as a product of inference or implication."). And for waiver-by-contract, there must be an express, written agreement that is legislatively authorized (that is, the state entity had statutory authority to enter the contract, thereby waiving sovereign immunity and binding the State). *Pan-Am Tobacco Corp.*, 471 So. 2d at 6.

Rojas (on behalf of a class of similarly situated students) seeks to sue the University, a state entity, and recover "fees for on-campus services that were not provided to students." To pierce the State's immunity, then, Rojas must identify an express written contract expressly addressing the University's obligation to provide such on-campus services. He has not done so, instead offering up a hodge-podge of documents that fails to clear this basic hurdle.

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[3] Of course, the people of Florida can waive sovereign immunity directly through constitutional amendment. *See* Art. I, § 1, Fla. Const. ("All political power is inherent in the people.").

Absent from the series of documents is any language obligating the University to provide specific, on-campus services to any student during any specific time. Nor is there any language that can be read to obligate the University to a refund of fees when any such services are paused, limited, or outright cancelled.

A walk through the attachments makes this clear. Although Rojas attached a copy of the University's financial liability agreement,[4] all that it does is expressly condition a student's right to enroll upon that student's agreement to pay tuition, fees, and any other amounts that may come due. It then walks through the student's obligation to keep track of what is owed and details the University's ability to recover delinquent debts should the student not honor the agreement to pay. The agreement does mention the

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[4] The financial liability agreement states:

> I agree to pay all UF debts and charges pursuant to UF policies. I understand that the university is advancing value to me in the form of educational services and that my right to register is expressly conditioned upon my agreement to pay the costs of tuition, fees, and other charges and any additional costs when those charges become due. I understand the university notifies students of debts by UF email. It is my responsibility to view my charges in ONE.UF, or at the location designated by my academic program. I understand that past due student accounts will result in university registration and services being withheld in accordance with university regulations. Delinquent debts may be reported to a credit bureau and referred to collection agencies, or litigated. I agree to pay all costs of collecting unpaid charges, including a percentage based third-party collection fee up to 30%, reasonable attorney's fees, and court costs the university may incur in efforts of collecting my account. This agreement shall be construed in accordance with Florida law and any lawsuit to collect unpaid fees may be brought in the appropriate court sitting in Alachua County, Florida, regardless of my domicile at the time of bringing such suit.

University's provision of "educational services," but this general phrase falls far short of conveying an express promise by the University to provide in-person or on-campus services to a student at any specific time.

Next is an estimate of tuition and fees for the 2019–2020 academic year, along with Rojas's tuition statement showing he paid his tuition and fees for the Spring 2020 semester. This confirms he paid the fees he seeks to recover but, like the financial agreement, it contains no language obligating the University to provide any specific in-person or on-campus services.

The complaint also cites to various University webpages that contain general statements or descriptions of various on-campus amenities. Without a signature or ratification by any person authorized to enter contracts that bind the University (and thus, the State), we question whether such gratuitous informational statements on a university's website could be legally binding for purposes of waiving sovereign immunity. In any event, though, the ones relied on here lack any language obligating the University to provide any specific service at any specific time.

Finally, Rojas points to section 1009.24, Florida Statutes, as imposing "implied conditions [into] UF's express contracts with its students." Yet this statute does not salvage Rojas's claim. To the contrary, the statute provides universities with discretion over the *specific* use of the fees, which are mandatory for all students as an incident of enrollment. *See* § 1009.24(2), Fla. Stat. ("All students shall be charged fees except students who are exempt or students whose fees are waived."). The Legislature has provided direction to the University through this statute as to the amount of fees as well as general descriptions of certain categories of services the fees may (or may not) go towards. *See, e.g.*, § 1009.24(10)(b), Fla. Stat. ("The student activity and service fees shall be expended for lawful purposes to benefit the student body in general. . . . The fund may not benefit activities for which an admission fee is charged to students, except for student-government-association-sponsored concerts."). But no provision of section 1009.24 directs the University to provide a specific service or requires that a service be provided in person or on campus.

III.

Given all of this, we cannot conclude that the University entered an express written contract with Rojas that obligated it to provide specific services at a specific time in a specific way. We therefore reverse the portion of the trial court's order denying the University's motion to dismiss the breach of contract claim. We affirm the rest of the order.

We are sympathetic to Rojas and all other students whose on-campus experiences were clipped short and rendered non-existent by the University's response to COVID-19. And if there were a sufficient contract attached to his complaint, we would affirm the trial court without hesitation. But without such an express, written agreement (and with no indication by the University that it consents to suit, nor any express statutory waiver by the Legislature to allow students such as Rojas to proceed with these types of claims), sovereign immunity bars the action.

AFFIRMED in part, REVERSED in part, and REMANDED; QUESTION CERTIFIED.

ROWE, C.J., concurs; MAKAR, J., dissents with opinion.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331. No extensions of time will be granted for the filing of such motions.

MAKAR, J., dissenting on merits but concurring in certified question.

Due to the COVID-19 pandemic, the University of Florida transitioned to remote learning for the spring and summer semesters of 2020. Graduate student Anthony Rojas filed a class action complaint asserting claims for breach of contract and unjust enrichment against the university related to on-campus services

for which the students paid but that were not provided during this time period.

In support of these claims, Rojas attached various documents including a University of Florida financial liability agreement, a general statement of tuition and various fees for the 2019–2020 academic year, and his tuition statement for the Spring 2020 term. The financial liability agreement states:

> *I agree to pay all [University of Florida] debts and charges pursuant to [University of Florida] policies. I understand that the university is advancing value to me in the form of educational services* and that my right to register is expressly conditioned upon my agreement to pay the costs of tuition, fees, and other charges and any additional costs when those charges become due. . . . *This agreement shall be construed in accordance with Florida law*[.] . . .

(Emphases added). The statement of tuition and fees summarized the breakdown of per credit hour amounts for tuition and fees based on a student's program (e.g., undergraduate, graduate, Law-JD, and so on). The fees included activity and service fees, athletic fees, health fees, and transportation access fees authorized by statute, specifically section 1009.24, Florida Statutes, whose relevant portions are set out in the Appendix.

After briefing and argument, the trial court dismissed the unjust enrichment claim but allowed the breach of contract claim to move forward over the university's objection that sovereign immunity shields it from contractual liability due to the lack of an express written agreement. The trial court concluded that the written financial liability agreement, along with the other attachments and averments, were sufficient at the motion to dismiss stage to constitute an express written agreement that the university would provide specific services pursuant to the university's statutory powers under section 1009.24, Florida Statutes, i.e., the statute applicable to services in Rojas's invoices.

In this appeal, the university seeks review of the trial court's non-final order denying its motion to dismiss based on sovereign

immunity. The university argues that the breach of contract claim is "based on an implied in fact contract at best, and more likely, an equitable claim based on a quasi-contract theory," such that sovereign immunity applies. It notes that sovereign immunity prohibits suit without an express, written contract. *Pan-Am Tobacco Corp. v. Dep't of Corr.*, 471 So. 2d 4, 5–6 (Fla. 1984). According to the university, the trial court erred because Rojas merely "cobbled together several different documents that, when read together, do not evidence an express, written contract between the parties." Rojas counters that his "complaint, including its attachments, sufficiently alleges at the motion to dismiss stage that [the university] has breached an express contract to provide [Rojas] and [class members] with specific services in exchange for fees," such that sovereign immunity is waived. Rojas asserts, and the trial judge agreed, that the attached documents together form an express agreement that provides a written offer, acceptance, and sufficient consideration to establish a waiver of immunity and a basis for liability against the university at this stage of the litigation.

To begin, it is a helpful reminder that almost forty years ago the supreme court summarized why enforcement of government contracts is legally necessitated.

> Where the legislature has, by general law, authorized entities of the state to enter into contract or to undertake those activities which, as a matter of practicality, require entering into contract, the legislature has clearly intended that such contracts be valid and binding on both parties. *As a matter of law, the state must be obligated to the private citizen or the legislative authorization for such action is void and meaningless*.

Pan-Am Tobacco Corp, 471 So. 2d at 5 (emphasis added). In other words, and as applied here, if the legislature authorizes the provision of educational and related services, and an institute of higher education acts pursuant to that authority by forming contractual relationships with students who pay tuition and fees for such services, sovereign immunity will not bar breach of contract claims provided they are linked to legislatively authorized services. *Id.* ("We therefore hold that where the state has entered

into a contract fairly authorized by the powers granted by general law, the defense of sovereign immunity will not protect the state from action arising from the state's breach of that contract."). How else are government contracts to be enforced if state agencies possessing the statutory authority to achieve governmental objectives cannot enter contracts for necessary goods and services? *Id.*

With these principles in mind, two standards of review govern disposition of this case. The first is that "a court may consider only the factual allegations set forth in the complaint, *must accept those allegations as true*, and *must resolve in the plaintiff's favor all inferences that might be drawn from those allegations*." *Mosby v. Harrell*, 909 So. 2d 323, 326 (Fla. 1st DCA 2005) (emphasis added). Applied here, the trial court—and this Court—must accept Rojas's allegations in his complaint as true along with inferences to be drawn from the complaint and its attachments. Second, a trial court's ruling regarding sovereign immunity is a question of law and is reviewed de novo. *DeSantis v. Geffin*, 284 So. 3d 599, 602 (Fla. 1st DCA 2019). Together these two standards dictate that Rojas has adequately alleged sufficient facts—buttressed by relevant documentation—to demonstrate that an express agreement exists such that the university has potential liability on a breach of contract claim.

It is important to note that an express written agreement need not be neatly packaged in one comprehensive document, particularly at the onset of litigation. Instead, it is well-established that "[s]everal writings may constitute a valid and binding written contract when they evidence a complete meeting of the minds of the parties and an agreement upon the terms and conditions of the contract." *Waite Dev., Inc. v. City of Milton*, 866 So. 2d 153, 155 (Fla. 1st DCA 2004). Consistent with this principle, the Second District recently rejected the argument—in a sovereign immunity case—that "without a unified, finalized, typed, paginated document, signed by the parties in a suitable place (or something to that effect), there can be no enforceable express contract." *Sarasota Cnty. Pub. Hosp. Dist. v. Venice HMA, LLC*, 325 So. 3d 334, 344 (Fla. 2d DCA 2021). Factual allegations, supported by some (but perhaps not all) of the relevant documents (remember, discovery has not occurred), must be accepted as true, including

resolving all inferences in a plaintiff's favor. Every piece of the contractual puzzle need not be firmly in place to conclude preliminarily that an express contract exists. *See, e.g., Amiker v. Mid-Century Ins. Co.*, 398 So. 2d 974, 975 (Fla. 1st DCA 1981) (reversing dismissal of complaint because plaintiff "could not attach to the complaint what they did not have"). Only the available and *material* pieces are necessitated. *Id.*; *see also* Fla. R. Civ. P. 1.130 (requiring attachment of "a copy of the portions thereof *material* to the pleadings") (emphasis added).

Here, the explicit language of the financial liability agreement, by itself, characterizes the relationship between the university and its students as an "agreement" that must be construed in accordance with Florida law. It bears repeating: "*This* ***agreement*** *shall be construed in accordance with Florida law*." As emphasized, the university—in its own written words—says that the relationship is a *contractual* one whose terms are governed by Florida law. This sounds a lot like language from Contracts 101. The financial liability agreement further states that "*the university is advancing value to [the student] in the form of educational services,*" which is an acknowledgment of the contractual nature of the transaction at issue: "We offer you educational services, you agree to pay us for these services, we have a deal." This, too, sounds a lot like a classic marketplace contract between a buyer (student) and a seller (university). Buttressing the contractual nature of the relationship are the other documents reflecting the tuition and fees that students must pay for the university's provision of "educational services," including fees for other statutorily authorized activities and services such as athletic fees, health fees, and transportation access fees, some of which may relate to on-campus services (e.g., infirmary, campus buses, sporting events/facilities). Notably, section 1009.24, Florida Statutes, refers to the provision of services "on the main campus" or in a "university health center," which directly supports the claim for recovery of denial of on-campus/in-person types of services, an issue best suited for disposition on a motion for summary judgment than a motion to dismiss.

Little doubt exists that an enforceable written contract of some sort exists; if one did not, the university would have difficulty collecting tuition and fees for services because of the lack of

mutuality. As the supreme court held in *Pan-Am Tobacco Corporation*, it "is basic hornbook law that a contract which is not mutually enforceable is an illusory contract. Where one party retains to itself the option of fulfilling or declining to fulfill its obligations under the contract, there is no valid contract and neither side may be bound." 471 So. 3d at 5 (internal citation omitted). If the tables were turned, and students failed to pay tuition and fees, a breach of contract claim would be the first in a university's complaint.

As such, the written financial liability agreement, along with the other documents and the factual allegations, collectively provide sufficient support *at this preliminary stage of this litigation* that an express written contract exists for legislatively authorized educational and related services. This approach, taken by the Second District in *University of South Florida Board of Trustees v. Moore*, 347 So. 3d 545 (Fla. 2d DCA 2022), makes the most sense because it accords the requisite deference to a complaint's allegations (buttressed by available documents) while allowing a university to assert its sovereign immunity defense as the facts become formally established. *Id.* at 551 (affirming denial of "USF's motion to dismiss based on the defense of sovereign immunity without prejudice to USF's right to assert the defense in a motion for summary judgment"); *see also Zainulabeddin v. Univ. of S. Fla. Bd. of Trs.*, 8:16-CV-637-T-30TGW, 2016 WL 1451726, at *3 (M.D. Fla. Apr. 13, 2016) (". . . at this stage of the proceeding, [plaintiff] does not need to identify a written contract, but merely allege one. This she has plainly done. . . . Whether the allegation will be supported by evidence is a question for summary judgment.").

To summarize, the allegations and documents in support of Rojas's breach of contract claim are sufficient to open the courthouse door at the motion to dismiss stage; whether he ultimately survives summary judgment and prevails in some fashion is to be determined in light of further factual development and the university's assertion of its various defenses. In this regard, sovereign immunity can't always be determined on the face of a complaint, making it advisable to allow factual development to crystalize as to the viability of specific claims arising from the exercise of authority under section 1009.24, Florida Statutes, and

the scope of a potential waiver of immunity. Judicial line-drawing is necessary, but erring on the side of caution, as courts are required to do at this initial stage of this lawsuit, countenances against dismissal in light of the written documentation and allegations presented. As to the certified question set forth in the majority opinion, I concur.

APPENDIX

The relevant portions of § 1009.24, Fla. Stat. (2022) are as follows:

> (9) Each university board of trustees is authorized to establish separate activity and service, health, and athletic fees. When duly established, the fees shall be collected as component parts of tuition and fees and shall be retained by the university and paid into the separate activity and service, health, and athletic funds. . . .
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> . . .
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> (10)(b) The student activity and service fees shall be expended for lawful purposes to benefit the student body in general. This shall include, but shall not be limited to, student publications and grants to duly recognized student organizations . . . . Unexpended funds and undisbursed funds remaining at the end of a fiscal year shall be carried over and remain in the student activity and service fund and be available for allocation and expenditure during the next fiscal year.
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> (11) Each university board of trustees shall establish a student health fee on the main campus of the university.
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> (12) Each university board of trustees shall establish a separate athletic fee on the main campus of the university. . . .
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> . . .

(14) Except as otherwise provided in subsection (15), each university board of trustees is authorized to establish the following fees:

. . .

(h) A fee for miscellaneous health-related charges for services provided at cost by the university health center which are not covered by the health fee set under subsection (11).

. . .

(r) Traffic and parking fines, charges for parking decals, and transportation access fees. Only university wide transportation access fees may be included in any state financial assistance award authorized under part III of this chapter, as specifically authorized by law or the General Appropriations Act.

. . .

With the exception of housing rental rates and except as otherwise provided, fees assessed pursuant to paragraphs (h)--(s) shall be based on reasonable costs of services. . . .

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