THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Davia Bunch and Casey Kelly, individually and on behalf of others similarly situated, Appellants,

v.

The University of South Carolina, Respondent.

Appellate Case No. 2024-000291

Appeal From Richland County
Jocelyn Newman, Circuit Court Judge

Opinion No. 6161
Heard November 13, 2025 – Filed August 19, 2026

AFFIRMED

Daniel Reynolds Dalton, of Mickelsen Dalton LLC, of Charleston; and Nathan David Chapman, of Kabat Chapman & Ozmer LLP, and Bradley Wilkes Pratt, of Bayuk Pratt LLC, both of Atlanta, Georgia, all for Appellants.

Robert H. Brunson, of Nelson Mullins Riley & Scarborough, LLP, of Charleston; and Benjamin Rush Smith, III, and Allen Mattison Bogan, of Nelson Mullins Riley & Scarborough, LLP, of Columbia, all for Respondent.

VINSON, J.: Appellants Davia Bunch and Casey Kelly, individually and on behalf of others similarly situated[1] (collectively, Students), appeal the circuit court's grant of summary judgment in favor of the University of South Carolina (USC) in this COVID-19 tuition refund case. Students, who were enrolled as undergraduates at USC in March 2020 when USC transitioned all of its in-person courses to remote instruction, argue the circuit court erred by concluding that (1) the parties' contract did not contain a requirement that USC provide face-to-face instruction; (2) sovereign immunity barred Students' claims; (3) Students did not suffer a legally cognizable harm; (4) the educational malpractice doctrine barred Students' claims; (5) the impossibility doctrine excused USC from performing under the contract; (6) Students acquiesced to the termination of face-to-face instruction; and (7) Students were not entitled to relief for their promissory estoppel or unjust enrichment claims. We affirm.

FACTS

When the COVID-19 pandemic spread to the United States in March 2020, Governor Henry McMaster issued an executive order directing the closure of all public schools in the state, including all state-supported colleges and universities, and authorizing college and university officials to make any necessary and appropriate arrangements to establish a means of delivering virtual instruction and remote learning. *See* Executive Dep't, State of South Carolina, Exec. Order No. 2020-09 (signed by Governor Henry McMaster). Thus, like many college campuses around the country,[2] USC transitioned all of its in-person classes to a remote instruction format and closed its campuses to students for the remaining six weeks of the spring 2020 semester. USC provided prorated refunds for fees related to university housing, meal plans, and parking permits, but it did not refund any portion of its students' tuition or other fees assessed for the spring 2020 term.

Students filed this lawsuit as a class action in May 2020 after they completed their spring semester, asserting claims for breach of contract, unjust enrichment,

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[1] Bunch and Kelly filed a motion for class certification in the circuit court, which was rendered moot when the circuit court granted summary judgment.
[2] *See, e.g.*, National Center for Education Statistics, *U.S. Education in the Time of COVID*, https://nces.ed.gov/surveys/annualreports/pdf/Education-Covid-time.pdf (last visited July 27, 2026) (noting that in spring 2020, "[eighty-four] percent of [American] college students reported having some or all classes moved to online-only instruction").

promissory estoppel, and conversion,[3] seeking a prorated refund of tuition and fees they paid for the spring 2020 semester.[4] Students alleged they entered contracts with USC that required them to pay tuition and in exchange, USC would provide live, face-to-face instruction in a physical building and classroom. Alternatively, Students alleged USC committed to providing in-person instruction through its advertising and other marketing materials. Students further alleged USC breached the contract when it moved its classes to remote instruction without providing a prorated refund for the difference between the on-campus educational experience they paid for and the emergency remote learning experience they received.

In her deposition, Bunch testified that to register for classes at USC, students must first sign into the "Self Service Carolina" system, then they must sign a Statement of Financial Responsibility (SFR) before they can continue with registration. The SFR provides,

> [USC] requires all students acknowledge the financial arrangement between the student and [USC]. By submitting course registration I am entering into a financial arrangement with [USC] and I accept the responsibility for all charges billed to my account.
>
> I understand that my USC bill will be posted online in Self-Service Carolina . . . and that all billing notices will be sent to my USC assigned email address and that it is my responsibility to review and pay my bill by the due date.
>
> I understand that accounts not paid when due are subject to a late fee and that current and/or future registration may be cancelled.

The remainder of the SFR explains the consequences of having a delinquent account or returned payments. It also includes the students' authorization for USC to contact them regarding billing matters. The SFR further provides, "I understand that all disputes about registration or payment will be governed by South Carolina law . . . ."

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[3] Students expressly abandoned their claims for conversion in their response to USC's motion for summary judgment.

[4] Students' complaint divided their claims into a "tuition class" and a "fee class."

USC's 2019–2020 Undergraduate Studies Academic Bulletin contains the following assertion at the beginning of the document:

> This bulletin is for information purposes only and does not constitute any contractual agreement between a student and [USC]. [USC] reserves the right to make changes in curricula, degree requirements, course offerings, or academic regulations at any time when, in the judgment of the faculty, the president, or the Board of Trustees, such changes are in the best interest of the students and [USC].

Bunch and Kelly were enrolled as full-time students in USC's standard Bachelor's Degree program during the spring 2020 semester and graduated upon the completion of the semester. Despite the switch to remote instruction, Bunch and Kelly both continued to attend their spring 2020 courses and did not seek refunds of any tuition or fees until they brought this lawsuit.

USC sought summary judgment on all of Students' claims, and the circuit court granted the motion. First, the circuit court held Students lacked standing because they failed to show they suffered any cognizable damages caused by the change to remote instruction. Next, the circuit court concluded Students failed to show USC made a contractual promise to deliver its curriculum or other educational services exclusively on campus. It held the SFR was an express contract under which Students expressly agreed to "'accept responsibility for all charges billed to [their] account' by 'submitting course registration.'" The circuit court determined the SFR did not incorporate course registration information. It concluded that the language of the SFR was clear and unambiguous and the construction of its terms was thus a question of law. The circuit court concluded the SFR did not obligate USC to provide classes in a particular format because Students signed the SFR and accepted financial responsibility for paying tuition before they could begin registering for classes and before ever seeing or knowing the method of instruction for each of their classes. Further, although it determined the SFR was the sole, express agreement between Students and USC, the circuit court noted USC's 2019–2020 Academic Bulletin contained an express disclaimer that USC reserved the right to alter its curricula and course offerings at any time.

The circuit court next held that even if USC did agree to provide in-person instruction, the impossibility doctrine excused USC from performing because the

Governor's executive order directing the closure of all state-supported universities made it illegal, and the unprecedented global pandemic made it unsafe to continue in-person classes during the spring of 2020. The circuit court additionally concluded that sovereign immunity also barred Students' claims and that Students waived their right to sue because they acquiesced to virtual instruction by continuing to attend virtual classes and failing to complain until after they were awarded full course credit and graduated.

Finally, the circuit court rejected Students' equitable claims for promissory estoppel and unjust enrichment on the merits because Students failed to show USC unambiguously agreed to provide in-person classes and on-campus services under all circumstances or that a benefit was conferred on USC that would be inequitable for it to retain. This appeal followed.

ISSUES ON APPEAL

I. Did the circuit court err by ruling the contract between Students and USC did not contain any requirement for face-to-face instruction?

II. Did the circuit court err by dismissing Students' claims on sovereign immunity grounds?

III. Did the circuit court err by ruling that receiving a different service than bargained for did not constitute a legally cognizable harm?

IV. Did the circuit court err by finding Students' claims were barred by the educational malpractice doctrine?

V. Did the circuit court err by determining the impossibility doctrine excused USC's performance and that the remote instruction USC provided was "substantially equivalent" to the face-to-face instruction?

VI. Did the circuit court err by finding Students acquiesced to the termination of face-to-face instruction?

VII. Did the circuit court err by rejecting Students' equitable claims?

STANDARD OF REVIEW

"When reviewing the grant of a summary judgment motion, this court applies the same standard that governs the [circuit] court under Rule 56(c), SCRCP . . . ." *Coker v. Cummings*, 381 S.C. 45, 51, 671 S.E.2d 383, 386 (Ct. App. 2008). Rule 56(c) "provides that the moving party is entitled to summary judgment 'if the [evidence before the court] show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 459, 892 S.E.2d 297, 299 (2023) (alterations in original); *see also* Rule 56(c), SCRCP (providing a court must grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law"). "On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in the light most favorable to the non-moving party." *Marlowe v. S.C. Dep't of Transp.*, 446 S.C. 309, 315, 919 S.E.2d 553, 556 (2025), *reh'g denied* (Sept. 10, 2025).

ANALYSIS

I. Sovereign Immunity[5]

As an initial matter, Students argue this court should reverse the circuit court's holding that sovereign immunity bars their claims. Our supreme court recently clarified that under the South Carolina Tort Claims Act (SCTCA),[6] sovereign immunity does not apply to contract claims. *See Thompson v. Killian*, 447 S.C. 177, 192-93, 924 S.E.2d 606, 614 (2025) (noting the SCTCA "restored sovereign immunity except where the General Assembly provided an exception"), *reh'g denied* (Jan. 16, 2026); *see also* § 15-78-20(d) (providing that "[n]othing in this chapter affects liability based on contract"). Thus, we hold sovereign immunity does not bar Students' breach of contract claim. However, the *Thompson* court held "the SCTCA restored sovereign immunity for equitable claims," opining that although "equitable claims arise from contract law principles, they remain distinct and do not fall under th[e] exception [in section 15-78-20(d)]." *Thompson*, 447 S.C. at 193-95, 924 S.E.2d at 614-15. Under this holding, sovereign immunity bars Students' equitable claims for promissory estoppel and unjust enrichment. Accordingly, we affirm the circuit court's grant of summary judgment as to Students' equitable claims.

[5] We address Students' Issues I and II out of order.
[6] S.C. Code Ann. §§ 15-78-10 to -220 (2005 & Supp. 2025).

II. Breach of Contract

A. Breach

Students argue the circuit court erred by finding the SFR was clear and unambiguous. Students assert the SFR expressly referenced and incorporated the course registration when it stated that "[b]y submitting course registration I am entering into a financial arrangement with [USC]." Relying upon *Café Associates v. Gerngross*,[7] they contend that course registration should be considered part of the contract because it was executed at the same time, by the same parties, for the same purpose, during the same transaction. Students additionally argue that even without incorporation, the SFR's express reference to course registration raises a question of fact as to whether the parties intended it to be incorporated into the SFR. We disagree.

We hold Students failed to set forth a genuine issue of material fact as to whether USC expressly agreed to provide exclusively in-person instruction under all circumstances. Viewing the evidence in the light most favorable to students, we hold the SFR (1) constituted the sole, express agreement between the parties, (2) contained no ambiguous terms, (3) did not incorporate course registration, and (4) included no express promise by USC to provide in-person instruction, especially during a global pandemic such as COVID-19.

"To recover for a breach of contract, the plaintiff must prove: (1) a binding contract; (2) a breach of contract; and (3) damages proximately resulting from the breach." *Hennes v. Shaw*, 397 S.C. 391, 399, 725 S.E.2d 501, 506 (Ct. App. 2012). "The necessary elements of a contract are offer, acceptance, and valuable consideration." *Id.* at 399, 725 S.E.2d at 505. "Valuable consideration may consist of 'some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.'" *Id.* (quoting *Prestwick Golf Club, Inc. v. Prestwick Ltd.*, 331 S.C. 385, 389, 503 S.E.2d 184, 186 (Ct. App. 1998)).

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[7] 305 S.C. 6, 10, 406 S.E.2d 162, 164 (1991) ("The general rule is that, in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the [c]ourt will consider and construe them together.").

"[W]ritten contracts are to be construed by the [c]ourt; but where a contract is ambiguous or capable of more than one construction, the question of what the parties intended becomes one of fact, and the question should be submitted to the jury." *Cafe Assocs., Ltd.*, 305 S.C. at 9, 406 S.E.2d at 164. "Whether the contract is ambiguous is a question of law for the court." *Harris v. Ideal Sols., Inc.*, 385 S.C. 74, 79, 682 S.E.2d 523, 526 (Ct. App. 2009). "If its language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the contract's language determines the instrument's force and effect." *Progressive Max Ins. Co. v. Floating Caps, Inc.*, 405 S.C. 35, 46, 747 S.E.2d 178, 184 (2013) (quoting *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct. App. 2004)). "On the other hand, a contract is ambiguous when its terms are capable of having more than one meaning when viewed by a reasonably intelligent person who has examined the entire agreement." *Id.*

Viewing the evidence in the light most favorable to Students, we hold the circuit court did not err by concluding the SFR was clear and unambiguous and contained no express agreement by USC to provide in-person courses under all circumstances. We reject Students' contention that the case *Black v. Freeman*[8] supports a conclusion that the contract at issue here was ambiguous. In *Black*, our supreme court reversed the trial court's order directing a verdict in favor of the respondent and held that "[t]he contract omitted any mention of the disputed term and the evidence was capable of more than one reasonable inference as to the parties' intent." *Id.* at 273, 262 S.E.2d at 880. Students assert that *Black* shows the omission of the disputed term—which they argue in this case was the mode of instruction—would have created a jury question. USC does not dispute the parties had a contractual relationship based upon the SFR. We hold the SFR constituted the entire express agreement between the parties. According to its plain and unambiguous language, by signing the SFR, Students agreed to be financially responsible for the courses for which they registered. The SFR contained no reference to method of instruction and nothing in the express language of the SFR required USC to provide in-person instruction. Thus, unlike the agreement in *Black*, the SFR contains no missing or ambiguous terms. *See Lee v. Univ. of S.C.*, 407 S.C. 512, 517, 757 S.E.2d 394, 397 (2014) ("[C]onstruction of a clear and unambiguous contract is a matter of law for the court . . . .").

Next, we reject Students' contention that even if the SFR did not expressly bind USC to provide in-person classes, the circuit court should have interpreted the SFR as incorporating course registration, which, Students argue, would have then bound

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[8] 274 S.C. 272, 262 S.E.2d 879 (1980).

USC to provide instruction in the method specified in the course registration materials. "The general rule is that, in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the Court will consider and construe them together." *Café Assocs.*, 305 S.C. at 10, 406 S.E.2d at 164. Here, however, Students do not contend course registration was a document they signed at the same time they agreed to the terms of the SFR. Rather, Students assert that because the SFR references "course registration" and they immediately began to register for courses after they agreed to the SFR, the circuit court should have construed the "instruments" together. In her deposition, Bunch acknowledged the SFR did not specifically reference face-to-face instruction, but she asserted the SFR "point[ed] to" her registration for courses at USC, which she claims was for face-to-face instruction. Nothing in the record shows Students clicked an "I agree" button or otherwise accepted any contractual offer by completing course registration. Thus, we hold course registration was not an "instrument" such that it must be construed with the SFR. Accordingly, we reject Students' arguments that under *Café Associates* we must interpret the SFR as having incorporated course registration.

Students additionally rely on *RentCo., a Division of Fruehauf Corp. v. Tamway Corp.*[9] to support their argument that the SFR incorporated course registration. We reject this argument. In *RentCo.*, this court found a prior oral agreement between the parties that was consistent with the written agreement but was not intended to be merged into the written agreement created a question of fact as to whether the parties intended the prior parol agreement to control. *Id.* at 267-68, 321 S.E.2d at 201. There is no oral agreement at issue here and there is no dispute that the course registration occurred *after* the written agreement (the SFR) was signed. Thus, we do not read *RentCo.* as requiring the incorporation of the course registration into the SFR.

Students additionally assert the circuit court erred by finding USC's disclaimer in the 2019–2020 Academic Bulletin was effective. The bulletin expressly stated that it did not constitute a contractual agreement between USC and the students. It further included the disclaimer that USC "reserve[d] the right to make changes in curricula, degree requirements, course offerings, or academic regulations at any time when, in the judgment of the faculty, the president, or the Board of Trustees, such changes are in the best interest of the students and [USC]." We agree this disclaimer did not create an enforceable agreement. However, because it did not

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[9] 283 S.C. 265, 321 S.E.2d 199 (Ct. App. 1984).

create an enforceable agreement, no reasonable inference can be drawn that Students relied upon any representations in the bulletin regarding the instructional method for each of the classes as creating an enforceable promise by USC to provide in-person instruction. *See Hennes*, 397 S.C. at 399, 725 S.E.2d at 506 ("To recover for a breach of contract, the plaintiff must prove: (1) a binding contract; (2) a breach of contract; and (3) damages proximately resulting from the breach."); *id.* at 399, 725 S.E.2d at 505 ("The necessary elements of a contract are offer, acceptance, and valuable consideration.").

Although Students assert the circuit court's ruling contradicts many of the decisions in COVID-19 tuition refund cases from other jurisdictions, we find these decisions are not persuasive under the factual and procedural circumstances presented here. *See, e.g.*, *Hickey v. Univ. of Pittsburgh*, 81 F.4th 301, 310-17 (3d Cir. 2023) (reversing the 12(b)(6) dismissal of the plaintiffs' breach of implied contract claims seeking refund of tuition); *Figueroa v. Point Park Univ.*, 553 F. Supp. 3d 259, 278 (W.D. Pa. 2021) (denying the university's 12(b)(6) motion to dismiss students' claims for breach of an implied contract and unjust enrichment, holding students had "sufficiently identified facts that suggest a plausible entitlement to recovery"); *Patel v. Univ. of Vt. & State Agric. Coll.*, 526 F. Supp. 3d 3, 23 (D. Vt. 2021) (denying the university's 12(b)(6) motion as to the student's claims for breach of contract and unjust enrichment for tuition refunds, finding it showed no basis for dismissal of such claims); *Bahrani v. Ne. Univ.*, No. CV 20-10946-RGS, 2020 WL 7774292 (D. Mass. Dec. 30, 2020) (ruling on the university's 12(b)(6) motion to dismiss and granting the motion in part and denying the motion in part); *Salerno v. Fla. S. Coll.*, 488 F. Supp. 3d 1211, 1217-19 (M.D. Fla. 2020) (denying the university's 12(b)(6) motion to dismiss the student's breach of contract claim, stating that Florida law recognizes that "[a] university's publications are terms of an 'implied-in-fact contract' rather than an express contract," and allowing the unjust enrichment claim to proceed as an alternative cause of action at that stage of the proceedings). Further, we note that many other jurisdictions have ruled in line with the circuit court's decision here. *See, e.g.*, *Berlanga v. Univ. of San Francisco*, 318 Cal. Rptr. 3d 782, 785 (2024) (affirming the trial court's grant of summary adjudication in favor of the university on students' claims for breach of contract, quasi-contract, and promissory estoppel, holding students "failed to raise a triable issue of fact regarding whether [the university] promised to provide exclusively in person instruction"); *Burt v. Bd. of Trs. of Univ. of R.I.*, 84 F.4th 42, 52 (1st Cir. 2023) (affirming the district court's grant of summary judgment in favor of the university, holding that "the plaintiffs have failed to make a plausible showing of an express contract for in-person, on-campus education" and that even though genuine issues of material fact existed as to whether implied contracts were formed, the university was discharged from any such contractual duty due to frustration); *In re Bos. Univ. COVID-19 Refund Litig.*, No. CV 20-10827-RGS, 2023 WL 2838379 (D. Mass. Apr. 7, 2023) (affirming summary judgment, finding the governor's "emergency orders rendered continued performance of the alleged contract illegal, not just unsafe"), *aff'd on other grounds sub nom.*, *Dutra v. Trs. of Bos. Univ.*, 96 F.4th 15 (1st Cir. 2024). Regardless, none of these cases have been decided based upon South Carolina law.

For these reasons, we hold there is no genuine issue of material fact as to this element of Students' breach of contract claim. As we stated, we conclude the SFR constituted the only express, written agreement between the parties and did not incorporate course registration. Because the SFR was clear and unambiguous and did not contain a requirement that USC must provide face-to-face instruction, we hold USC is entitled to judgment as a matter of law on the issue of whether USC breached the SFR by failing to provide in-person instruction amid a global pandemic for the remaining six weeks of the spring 2020 semester. We therefore affirm the circuit court's grant of summary judgment on this ground.

B. Damages

Students argue the circuit court erred by concluding they suffered no legal injury as a matter of law.[10] Students assert they are entitled to nominal damages even if general damages cannot be proven. We disagree.

"To recover for a breach of contract, the plaintiff must prove: (1) a binding contract; (2) a breach of contract; and (3) damages proximately resulting from the breach." *Hennes*, 397 S.C. at 399, 725 S.E.2d at 506. "As to damages, 'the burden is on a party pleading a fact to prove it.'" *S.C. Dep't of Transp. v. M & T Enters. of Mt. Pleasant, LLC*, 379 S.C. 645, 665, 667 S.E.2d 7, 18 (Ct. App. 2008) (quoting *LandBank Fund VII, LLC. v. Dickerson*, 369 S.C. 621, 628, 632 S.E.2d 882, 886 (Ct. App. 2006)). "In a breach of contract action, damages serve to place the nonbreaching party in the position he would have enjoyed had the contract been performed." *Branche Builders, Inc. v. Coggins*, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009) (quoting *S.C. Fed. Sav. Bank v. Thornton-Crosby Dev. Co.*, 303 S.C. 74, 77, 399 S.E.2d 8, 10 (Ct. App. 1990)). Although "the existence, causation[, and] amount of damages can[not] be left to conjecture, guess[,] or speculation, proof with mathematical certainty of the amount of loss or damage is

[10] Students do not directly challenge the circuit court's holding that they lacked standing; therefore, we do not address this issue.

not required." *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 43, 691 S.E.2d 135, 146 (2010) (quoting *Whisenant v. James Island Corp.*, 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981)).

Viewing the evidence in the light most favorable to Students, we hold Students have failed to set forth a genuine issue of material fact as to whether they suffered any injury or damages caused by USC's transition to remote learning in the spring of 2020.

On the issue of tuition, the evidence conclusively demonstrates that USC charged all students enrolled in its traditional undergraduate degree program the same tuition regardless of whether they were enrolled in online courses, in-person courses, or both. USC stated it charged \$6,144 in tuition for full-time resident students and \$16,764 for full-time non-resident students enrolled in its undergraduate degree program at its Columbia campus, regardless of whether the courses were offered online, in-person, or both, during the spring 2020 semester. Bunch and Kelly were both charged the tuition listed for students enrolled at the Columbia campus; Bunch was charged \$6,144 in tuition as a resident student and Kelly was charged \$16,764 as a non-resident student. Prior to the shift to remote instruction, Bunch was enrolled in two online courses during the spring 2020 semester and paid the same tuition as she would have if all her classes were held in-person. Kelly and Bunch completed all their classes for the spring 2020 semester and obtained their degrees as anticipated in May 2020. Kelly earned a GPA of 3.8 and Bunch earned a GPA of 3.9 for the spring 2020 semester. They also obtained employment after graduation. Thus, Students have failed to set forth evidence to show that they were placed in a different position than they would have enjoyed had they been able to attend their classes in person for the final six weeks of the semester.

Although USC admitted it charged students enrolled in its Palmetto College, an online undergraduate degree program, a tuition of \$5,199, for full-time resident students and \$10,428, for full-time non-resident students, which was lower than the tuition for on-campus students, USC explained the online degree *completion* program is the only online degree program offered at USC. Students do not contend they earned a degree through an online program; rather, they earned a standard four-year college degree. For these reasons, we hold there is no genuine issue of material fact as to whether they are entitled to a refund of any portion of tuition.

Likewise, Students have failed to establish a genuine issue of material fact exists as to whether they are entitled to a refund of fees. *See Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013) ("[I]t is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine."). Bunch and Kelly both sought the return of a technology fee charged for the spring 2020 semester. Kelly also sought a refund for a "language lab fee" and an "art lab fee." Bunch and Kelly both testified in their depositions that they believed the technology fee was charged in exchange for USC's provision of on-campus Wi-Fi connectivity and computer and printer services. Dr. Sandra Kelly, vice provost and dean of undergraduate studies for USC, testified in her deposition that "in typical times" the technology fees were used to support students' on-campus use of technology. However, she explained that in the spring of 2020, the technology fee was used to support USC's shift to online learning, which included the massive use of Blackboard, webcams, computer services, and training. In an email responding to a student's fee question, USC's Bursar's Office also represented that the technology fee was charged to all students attending USC, regardless of whether they were attending in-person or online courses and was used for the enhancement of technology. The Bursar's Office further explained that the fee helped to acquire, install, and maintain up-to-date and emerging technologies to enhance student learning outcomes. Furthermore, Bunch acknowledged the use of technology was essential to USC's continuation of classes during the pandemic and agreed that she used Blackboard while attending classes remotely. Students do not dispute that USC charges the technology fee regardless of whether a student is enrolled in online or in-person courses. Without more, Students' testimony regarding their subjective belief as to the use of the fees does not create a genuine issue of material fact as to whether they were deprived of technology services for which they paid.

Further, as to the claim for a refund of the art and technology lab fees, we hold Students have failed to set forth a genuine issue of material fact as to this claim. *See Dunes W. Golf Club, LLC v. Town of Mount Pleasant*, 401 S.C. 280, 293, 737 S.E.2d 601, 608 (2013) (noting the party opposing summary judgment "may not rest upon mere allegations or denials[] but must respond with specific facts showing a genuine issue [of material fact]" (quoting *City of Columbia v. Town of Irmo*, 316 S.C. 193, 195, 447 S.E.2d 855, 857 (1994))). Students argued they "were not allowed on campus to utilize the services and equipment for which they had paid fees." However, Students failed to set forth any evidence regarding the purpose of these fees and whether they were denied the benefit they paid for with respect to such fees. We do not presume Students are entitled to a refund of "lab" fees based solely on the fact that campus was closed when the record contains no evidence as to the purpose of the fees. *See Town of Hollywood*, 403 S.C. at 477, 744 S.E.2d at 166 ("[I]t is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.").

Finally, as to Students' argument they are entitled to nominal damages, we hold this issue is not preserved for appellate review. "Generally, an issue must be both raised to and ruled upon by the [circuit] court in order to be preserved for appellate review. Arguments raised for the first time on appeal are not preserved for our review." *In re Walter M.*, 386 S.C. 387, 392, 688 S.E.2d 133, 136 (Ct. App. 2009) (citation omitted). This issue was neither raised to nor ruled upon by the circuit court; instead, Students raise this argument for the first time on appeal. Accordingly, we hold this issue is not preserved for appellate review.

Based on the foregoing, we find Students failed to show the existence of a genuine issue of material fact and USC is entitled to judgment as a matter of law on the issue of damages. We therefore affirm the circuit court's grant of summary judgment on this issue as well.

Because we conclude sovereign immunity bars Students' equitable claims and there is no genuine issue as to any material fact as to Students' breach of contract claim, we need not address Students' remaining issues. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding when the court's disposition of a prior issue is dispositive, the court need not address remaining issues).

CONCLUSION

We hold Students failed to show USC expressly agreed to provide in-person instruction or that Students suffered any damages when USC transitioned to virtual instruction for the remaining six weeks of the spring 2020 semester following the emergence of the COVID-19 pandemic. Accordingly, the circuit court's order granting summary judgment in favor of USC is

AFFIRMED.

KONDUROS and GEATHERS, JJ., concur.