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IN THE
COURT OF APPEALS OF INDIANA

Indiana University, by and through its Board of Trustees,

Appellant-Defendant,

v.

Jaden Thomas, et al., individuals, each on behalf of himself and all others similarly situated,

Appellees-Plaintiffs

March 17, 2021

Court of Appeals Case No. 20A-PL-361

Interlocutory Appeal from the Monroe Circuit Court

The Honorable Holly M. Harvey, Judge

Trial Court Cause No. 53C06-1810-PL-2169

Crone, Judge.

Case Summary

[1] Students residing in freshman dormitories on Indiana University's Bloomington campus (the Plaintiffs) filed a class-action complaint against the University and its Board of Trustees (the University) asserting contract and tort claims and requesting damages and injunctive relief relating to mold growth in the dorms. The University took steps to remediate the mold and paid over $7,000,000 in compensation to affected students. The Plaintiffs filed a motion to certify four proposed litigation classes; the trial court granted the motion as to three of the classes. The University filed a motion for partial summary judgment on the Plaintiffs' tort claims, asserting that its payments exceeded its $5,000,000 liability cap under the Indiana Tort Claims Act (ITCA); the trial court denied that motion. The University now appeals, arguing that the trial court erred in certifying the classes and denying its partial summary judgment motion. We agree and therefore reverse and remand.

Facts and Procedural History

[2] In October 2018, pursuant to the ITCA, attorneys representing several named Plaintiffs, including Jaden Thomas, filed a notice of tort claim with the University on behalf of those students "and all individuals similarly situated, in relation to injuries they have suffered, and continue to suffer, due to their exposure to mold that has infested their residential dormitories at IU Bloomington[,]" including, specifically, Foster and McNutt dorms. Appellant's

App. Vol. 8 at 224. The next day, the Plaintiffs filed a class-action complaint against the University for breach of contract, breach of implied warranty of inhabitability, and declaratory judgment. The complaint alleged the existence of a "mold infestation" in "residential dormitories provided and maintained by" the University that "created a dangerous and toxic environment for [the] Plaintiffs and members of the putative Class." Appellant's App. Vol. 2 at 89. The Plaintiffs requested damages and declaratory, equitable, and injunctive relief, including remediation of the mold; they also indicated "the potential need" to amend the complaint to include tort claims, depending on the University's response to their tort claim notice. *Id*. at 91.

[3] Remediation efforts were already underway when the complaint was filed and ultimately resulted in either temporary or permanent relocation of students residing in Foster, McNutt, and Teter dorms. The University converted lounges in Forest and Eigenmann dorms into temporary living quarters for some of the displaced students. As a precautionary measure, the University placed high-efficiency particulate air (HEPA) filters in Ashton, Wright, Collins, and Hillcrest dorms, which led to noise complaints by students in those dorms.

[4] The University also implemented several compensation programs for students affected by mold. Shortly after the Plaintiffs filed their complaint, the University applied a $3000 credit to the bursar accounts of 2458 residents of Foster and McNutt, for a total of $7,374,000; if a student did not have unpaid charges on his or her account, the credit was issued to the student via check or bank account deposit. As another example, the University has paid students

$237,629 in an ongoing claims process for "mold-related damages and losses, including claims for the reimbursement of medical expenses and property losses" such as "laundry services, moving and relocation expenses, and other damages to personal property." Appellant's App. Vol. 8 at 235-36.

[5] In January 2019, the University denied the Plaintiffs' tort claim notice on the basis that it had "already expended more than one-point-five times its aggregate statutory liability under the ITCA in mold-related compensation to students for this event." *Id*. at 230; *see* Ind. Code § 34-13-3-4(a) (capping "aggregate liability of all governmental entities" for injury to or death of all persons in any one "occurrence" at $5,000,000). Later that month, the Plaintiffs amended their complaint to include more named plaintiffs, allegations, and counts. Several counts were dismissed, leaving the following eight counts, which are numbered according to the amended complaint: (1) breach of contract, (2) breach of implied warranty of habitability, (3) negligence, (4) negligent failure to warn, (5) constructive fraud, (6) negligent infliction of emotional distress, (10) money had and received, and (11) unjust enrichment.

[6] Count 1 alleges that the University contracted with the Plaintiffs to provide dorms "that were suitable and ready for inhabitation by students" and that the University breached the contract by providing rooms "that were infested with mold" and by failing to "adequately repair or provide a remedy" for allegedly "unsanitary and dangerous conditions[.]" Appellant's App. Vol. 2 at 132-33. The count alleges damages such as "personal injury, medical expenses, damage to property, additional living expenses and the need for appropriate alternative

residential lodging during any remediation of the mold infestation, mental anguish, [and] pain and suffering," and requests actual or consequential damages, injunctive and/or declaratory relief, attorney's fees and costs, and other just and proper relief. *Id*. at 134. Count 2 alleges that the University made an implied warranty of habitability as to the nature of the dorm rooms, "including specifically that they would be clean, safe, and habitable[,]" and that the University breached that warranty by providing rooms "infested with mold[.]" *Id*. at 134, 135. The count alleges damages and requests relief identical to that in Count 1.

[7] Count 3 alleges that the University "had a duty to use care in inspecting, cleaning, maintaining, and making repairs and remediations" to the dorms and to communicate with the Plaintiffs "truthfully and reasonably regarding the status of the [dorms] and any safety or health issues contained therein" and that the University breached that duty by negligently doing (or not doing) those acts. *Id*. at 136. This count, and the following three counts, allege unspecified damages and request actual and consequential damages, attorney's fees and costs, and other just and proper relief. Count 4 alleges that the University knew about the mold before and during the time that the Plaintiffs moved into the dorms, owed them a duty to warn them about it, and negligently failed to do so. Count 5 alleges that the University owed the Plaintiffs a duty "due to their relationship as landlord and university and as the sole party in control of information about, and the ability to address," the mold, that the University "violated that duty by making deceptive material misrepresentations of past or

existing facts or remaining silent when a duty to speak existed," and that the Plaintiffs relied on those misrepresentations and "suffered injury as a proximate result thereof." *Id*. at 138. Count 6 alleges that the University owed the Plaintiffs a duty "to use care in inspecting, cleaning, maintaining, and making repairs and remediations to" the dorms and to communicate with them "truthfully and reasonably regarding the status of the [dorms] and any safety or health issues contained therein[,]" and that the University breached that duty, which proximately caused the Plaintiffs "mental, emotional, and physical injuries and damages[.]" *Id*. at 139.

[8] Count 10 "is expressly pled in the alternative to claims based on contract" and alleges that the University received money either from the Plaintiffs or from third parties on their behalf and for their benefit "in order to provide academic services and residences" to the Plaintiffs, and that "[t]he circumstances are such that [the University], in equity and good conscience, ought not to retain that money," as the University provided dorms containing mold that harmed the Plaintiffs "and diminished or eliminated" the Plaintiffs' abilities "to participate in and/or obtain fair value from the academic services and college experience" that the Plaintiffs expected. *Id*. at 143. The count requests that the money be returned to the Plaintiffs, as well as other just and proper relief. Count 11 is also "expressly pled in the alternative to claims based on contract" and alleges that "[a] measurable benefit was conferred" on the University by the Plaintiffs, "including those amounts paid for tuition, room, board, and other amounts by [the] Plaintiffs to enroll, attend, and live at IU[,]" that the benefit was conferred

on the University "at its own behest and was based on [its] representation that it would provide residential dwellings to [the] Plaintiffs that were fit for habitation and that would allow [the] Plaintiffs to fully pursue and obtain a university education and college experience[,]" and that "[i]t would be unjust for [the University] to retain this benefit" because the dorms contained mold that harmed the Plaintiffs and "disrupted [their] efforts to succeed and prosper in their pursuit of a university education and college experience." *Id*. at 143, 144. The count requests damages "in an amount equal to the value of the benefit conferred on" the University, as well as other just and proper relief. *Id*. at 144.

[9] The University filed a motion to dismiss the amended complaint, which the trial court denied. In May 2019, pursuant to Indiana Trial Rule 23, the Plaintiffs filed a motion to certify four proposed classes. Three of the classes are for litigation of liability and damages regarding the claims raised in Counts 1, 2, 10, and 11 of the amended complaint. The Plaintiffs designated these classes as the "Moldy Dorms Class," i.e., "[a]ll residents of Foster, McNutt, and Teter dorms during the 2018-2019 school year[,]" the "Noise Polluted Dorms Class," i.e., "[a]ll residents of Ashton, Collins, [Hillcrest,] and Wright dorms[,]" and the "Overcrowded Dorms Class," i.e., "[a]ll residents of Forest and Eigenmann dorms[.]" Appellant's Rule 14(C) App. Vol. 2 at 58-59.

[10] The Plaintiffs summarized their claims with respect to each class as follows: Moldy Dorms Class: "Residents in these dorms received housing of reduced value and suffered a diminished university experience due [to] the presence of elevated mold levels in the buildings that required intrusive in-room mold

remediation efforts, including the installation of bulky, noisy HEPA filters in their rooms"; Noise Polluted Dorms Class: "Residents in these dorms received housing of reduced value and suffered a diminished university experience due to the presence of elevated mold levels in the buildings that required the installation of bulky, noisy HEPA filters in their rooms"; and Overcrowded Dorms Class: "Residents in these dorms received housing of reduced value and suffered a diminished student experience due to overcrowding and the lost use of lounges and other common areas which were used by students relocated from other dorms due to [the] presence of elevated mold levels in the other buildings." Appellant's Rule 14(C) App. Vol. 4 at 127 (Plaintiffs' reply in support of motion for class certification).

[11] The Plaintiffs also requested certification of the Moldy Dorms Class for litigation as to liability regarding the claims raised in Counts 3 through 6 of their amended complaint; this fourth class is designated as the "Tort Issues Class." Cert. Order at 1. The University filed a response in opposition to the Plaintiffs' motion, in which it argued, among other things, that the Noise Polluted Dorms and Overcrowded Dorms Classes should not be certified because they are not based on allegations contained in the amended complaint.

[12] In October 2019, the trial court held a hearing on the Plaintiffs' motion for class certification, at which only argument was presented regarding evidence already submitted by the parties. In January 2020, the court issued an order granting the Plaintiffs' motion as to the Moldy Dorms, Noise Polluted Dorms, and Tort

Issues Classes, and denying the motion as to the Overcrowded Dorms Class. Specifically, the trial court found in pertinent part,

> The Complaint does not allege breach of contract or breach of implied warranty for "receiving housing of reduced value" and suffering "diminished student experience due to overcrowding." Rather, the Complaint specifically refers to damages caused by exposure to "Hazardous Conditions" as defined by the Plaintiffs. To allow Plaintiff[s] to certify the "Overcrowding Class" would be to certify a class of plaintiffs which do not exist within the parameters of the Amended Complaint. The Court therefore denies the Plaintiffs' request to certify the "Overcrowding Class". The Court does not find that the same analysis holds true for either the Moldy Dorms or Noise-Polluted Dorms classes.

Id. at 2-3.

[13] In the meantime, the University had filed a motion for partial summary judgment on all tort claims, which the University defined as Counts 3 through 6, 10, and 11, on the basis that it had "already paid more than $7.7 million to students affected by the alleged mold issues" and thereby exceeded the ITCA's liability cap. Appellant's App. Vol. 8 at 154. In their response, the Plaintiffs argued that Counts 10 and 11 are not tort claims and that factual disputes exist regarding how much money was paid for tort claims and whether those claims arose from a single occurrence under the ITCA.

[14] In March 2020, after a hearing, the trial court issued an order denying the University's motion for partial summary judgment. The court concluded that Counts 10 and 11 are not tort claims because the ITCA requires notice of a

"loss," and neither claim relates "to a 'loss' as that term is defined by the ITCA." Summary Judgment Order at 3. The court also concluded that the Plaintiffs' complaint relates to one occurrence, but that a factual dispute exists regarding whether the ITCA's liability cap has been met because questions remain as to whether the recipients of the bursar credits had actually suffered a loss, the amount of any loss, and whether the recipients had consented to the credits as a settlement of potential claims.

[15] The University appeals both the certification and the summary judgment rulings. The Plaintiffs do not appeal the trial court's refusal to certify the Overcrowded Dorms Class. Additional facts will be provided below.

Discussion and Decision

Section 1 – The trial court abused its discretion in certifying the Moldy Dorms and Noise Polluted Dorms Classes.

[16] We first address the University's argument that the trial court erred in granting the Plaintiffs' motion to certify the Moldy Dorms and Noise Polluted Dorms Classes.[1] "The class action is 'an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.'" *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 700-701 (1979)). "The principal purpose of the class action

[1] The University also argues that the trial court erred in certifying the Tort Issues Class. We need not address that argument because, as we explain below, the court should have granted the University's motion for partial summary judgment on the Plaintiffs' tort claims.

certification is 'promotion of efficiency and economy of litigation.'" *LHO Indpls. One Lessee, LLC v. Bowman*, 40 N.E.3d 1264, 1269 (Ind. Ct. App. 2015) (quoting *Gomez v. St. Vincent Health, Inc.*, 622 F. Supp. 2d 710, 717 (S.D. 2008)). "The determination of whether an action is maintainable as a class action is 'committed to the sound discretion of the trial court.'" *Assoc. Med. Networks, Ltd. v. Lewis*, 824 N.E.2d 679, 682 (Ind. 2005) (quoting *N. Ind. Pub. Serv. Co. v. Bolka*, 693 N.E.2d 613, 615 (Ind. Ct. App. 1998), *trans. denied*). "Appellate courts reviewing a class certification employ an abuse of discretion standard." *Id*.[2] An abuse of discretion occurs when the trial court's decision rests upon an errant legal conclusion or an improper application of law and fact. *LHO Indpls.*, 40 N.E.3d at 1269. "Because Indiana Trial Rule 23 is based on Rule 23 of the Federal Rules of Civil Procedure, it is appropriate to consider federal court interpretations when applying the Indiana Rule." *Id*.

[17] "The plaintiff has the burden of establishing that the class certification requirements of Trial Rule 23 have been met." *Id*. We need not determine whether the Plaintiffs met their burden here, however, because the trial court certified the Moldy Dorms and Noise Polluted Dorms Classes based on claims not pled in the Plaintiffs' amended complaint; this was an abuse of discretion. *See Anderson v. U.S. Dep't of Housing & Urban Dev.*, 554 F.3d 525, 529 (5th Cir. 2008) (stating that a trial court's "authority to certify a class under Rule 23 does

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[2] Because the trial court did not hold an evidentiary hearing on the motion for certification and ruled on a paper record, we do not review its findings and conclusions under the clearly erroneous standard. *Clark-Floyd Landfill, LLC v. Gonzalez*, 150 N.E.3d 238, 243 n.1 (Ind. Ct. App. 2020), *trans. denied*.

not permit it to structure a class around claims not pled."); *see also Brown v. Am. Airlines, Inc.*, 285 F.R.D. 546, 560 (C.D. Cal. 2011) ("Class certification is not a time for asserting new legal theories that were not pleaded in the complaint."). Similar to what the trial court recognized with respect to the Overcrowded Dorms Class, the amended complaint does not allege breach of contract or breach of implied warranty for "receiving housing of reduced value" and suffering "diminished student experience due to the presence of elevated mold levels in the buildings that required intrusive in-room mold remediation efforts, including the installation of bulky, noisy HEPA filters in their rooms." Appellant's Rule 14(C) App. Vol. 4 at 127.[3]

[18] In fact, as the University points out, the amended complaint "asked for court-ordered remediation[,]" but the Moldy Dorms and Noise Polluted Dorms Classes claim that the University "breached its contract and the implied warranty **by conducting** remediation." Reply Br. at 9. We agree with the University that this sets up an untenable "double bind": "[s]ue and ask for a remedy and if the remedy is implemented then change your claims in the class papers to turn the remedy into a breach." *Id*. at 11-12. We further agree with the University that we should not condone such "gotcha" tactics; instead, we should "encourage our institutions to take steps to swiftly remedy issues like

[3] The Plaintiffs suggest that they raised these allegations in their response to the University's motion to dismiss, but they cite no authority for the proposition that their response amended their complaint, which makes no mention of reduced housing values or noise-related grievances. *Cf. Thomason v. Nachtrieb*, 888 F.2d 1202, 1205 (7th Cir. 1989) ("It is a basic principle that the complaint may not be amended by the briefs in opposition to a motion to dismiss, nor can it be amended by the briefs on appeal.").

indoor mold growth" and not "disincentivize proactive responses in similar circumstances." *Id*. at 12. In other words, we refuse to perpetuate the adage that no good deed goes unpunished. Accordingly, we reverse the trial court's certification of the Moldy Dorms and Noise Polluted Dorms Classes.

Section 2 – The trial court erred in denying the University's motion for partial summary judgment on the Plaintiffs' tort claims.

[19] We now address the University's argument that the trial court erred in denying its motion for partial summary judgment on the Plaintiffs' tort claims and in concluding that those claims do not include Counts 10 and 11 of the amended complaint. We review a summary judgment ruling de novo, applying the same standard as the trial court. *Singh v. Singh*, 155 N.E.3d 1197, 1204 (Ind. Ct. App. 2020). "The moving party bears the initial burden of making a prima facie showing that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law." *Id*. (italics omitted). "Summary judgment is improper if the moving party fails to carry its burden, but if it succeeds, then the nonmoving party must come forward with evidence establishing the existence of a genuine issue of material fact." *Id*. "We construe all factual inferences in favor of the nonmoving party and resolve all doubts as to the existence of a material issue against the moving party." *Id*. "[O]ur review is limited to those facts designated to the trial court[.]" *Converse v. Elkhart Gen'l Hosp., Inc.*, 120 N.E.3d 621, 624 (Ind. Ct. App. 2019). "Issues of statutory construction present questions of law, which we review de novo." *Matter of Supervised Estate of Kent*,

99 N.E.3d 634, 637 (Ind. 2018). We are not bound by the trial court's findings of fact and conclusions thereon, which "merely aid our review by providing us with a statement of reasons for the trial court's actions." *Converse*, 120 N.E.3d at 624.

[20] We begin our analysis with an overview of the relevant provisions of the ITCA, which "applies only to a claim or suit in tort" against governmental entities like the University. Ind. Code § 34-13-3-1; *see* Ind. Code §§ 34-6-2-49 (defining "governmental entity" for purposes of ITCA as "the state or a political subdivision of the state"), Ind. Code § 34-6-2-110(7) (listing "state educational institution" as a political subdivision). A tort claim against a political subdivision is barred unless notice is filed with the governing body of that political subdivision within 180 days after "the loss" occurs. Ind. Code § 34-13-3-8(a). A "loss" is defined as "injury to or death of a person or damage to property." Ind. Code § 34-6-2-75(a). The notice must "describe in a short and plain statement the facts on which the claim is based." Ind. Code § 34-13-3-10. "The statement must include the circumstances which brought about the loss, the extent of the loss, the time and place the loss occurred, the names of all persons involved if known, [and] the amount of the damages sought …." *Id*.

[21] The combined aggregate tort liability of all governmental entities is capped at $700,000 for injury to or death of one person in any one "occurrence" and $5,000,000 for injury to or death of all persons in that occurrence. Ind. Code § 34-13-3-4(a). Once the cap is reached, the State is immune from further liability for that occurrence. *VanDam Estate v. Mid-America Sound*, 25 N.E.3d 165,167-68

(Ind. Ct. App. 2015), *trans. denied*. This Court has acknowledged that "[t]he aggregate liability cap is a rational means to achieve the legitimate legislative goal of protecting the public treasury." *Id*. at 170. With certain exceptions not relevant here, "the governing body of a political subdivision may compromise, settle, or defend against a claim or suit brought against the political subdivision or its employees." Ind. Code § 34-13-3-16.

[22] The trial court determined as a matter of law that the mold growth in the dorms was a single occurrence for purposes of the ITCA; the Plaintiffs have not questioned that determination in responding to the University's arguments on appeal (presumably so as not to undermine their own arguments in favor of class certification), and we are not inclined to disturb it given the Plaintiffs' representations in their amended complaint.[4] The question then becomes whether the University's payments to students satisfied its aggregate liability of $5,000,000 for that occurrence. For obvious reasons, the parties focus on the $7,374,000 that the University paid to 2458 residents of Foster and McNutt; residents of those dorms are among the "individuals similarly situated" to the students named in the tort claim notice, who allegedly suffered injuries to their persons and property "due to their exposure to the mold that has infested their residential dormitories at IU Bloomington." Appellant's App. Vol. 8 at 224,

[4] In its order, the trial court noted that the ITCA does not define "occurrence" and that the Plaintiffs had characterized their alleged injuries as being "caused by one event: the alleged presence of mold in the dorms." Summary Judgment Order at 4; *see* Appellant's App. Vol. 2 at 130 (Plaintiffs' amended complaint alleging that "all Class members were injured through the uniform unlawful conduct described above").

225; *see id*. at 232 (affidavit from University bursar stating that she "was directly involved with applying credits" to bursar accounts of students "who were impacted or *potentially* impacted by mold in the McNutt and/or Foster dormitories") (emphasis added).

[23] In its order, the trial court concluded that the term "potentially" "implies that a question exists as to whether the student suffered a loss." Summary Judgment Order at 5. The Plaintiffs espouse this position on appeal, but it is fatally at odds with the binding judicial admissions in their amended complaint that "*all* Class members were injured through the uniform unlawful conduct described" in the complaint and that "even those students who suffered no apparent physical injury were still harmed due to the ongoing disruption and fear and anxiety caused by" the University's alleged failure to effectively remediate the mold. Appellant's App. Vol. 8 at 191, 174 (emphasis added); *see Hayden v. Franciscan Alliance, Inc.*, 131 N.E.3d 685, 693 (Ind. Ct. App. 2019) (stating that "[a]n admission in a pleading is conclusive" and therefore binding on summary judgment), *trans. denied* (2020). The Plaintiffs' current insistence that "all" does not mean "all" is wholly inconsistent with their prior judicial admissions.

[24] Contrary to what the trial court's order suggests, the ITCA does not require that a claimant prove both the existence and the amount of a loss before the claim may be settled by a governmental entity. Indeed, as the University notes, the ITCA is a "tort **claims** act, not a 'proven loss' act or even a 'valid claims' act." Appellant's Br. at 55. Moreover, the University correctly observes that "[o]ne need not have proved (or even sustained) a loss to assert a claim" and that "a

loss is generally not proven until trial." *Id*. at 56. Proving a loss is not a condition precedent to asserting or settling tort claims in other contexts; the ITCA does not include such a condition, and we are not at liberty to impose one. *See City of Gary v. Smith & Wesson Corp.*, 126 N.E.3d 813, 824 (Ind. Ct. App. 2019) ("[I]t is just as important to recognize what a statute does not say as it is to recognize what it does say. A court may not read into a statute that which is not the expressed intent of the legislature.") (alteration in *City of Gary*) (quoting *Rush v. Elkhart Cnty. Plan Comm'n*, 698 N.E.2d 1211, 1215 (Ind. Ct. App. 1998), *trans. denied*), *trans. denied*. Nor are we at liberty to impose a requirement that a governmental entity obtain consent or consideration from a claimant, via a release or otherwise, in order for a payment to be considered a settlement of a claim pursuant to the ITCA.[5]

[25] In sum, we hold that the University's payments to Foster and McNutt residents exceeded its aggregate liability for the Plaintiffs' tort claims under the ITCA and that the trial court erred in denying its motion for partial summary judgment on those claims.[6]

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[5] The legislature knows how to impose a release requirement when it wants to. *See* Ind. Code § 34-13-8-6 (providing that persons eligible for special supplemental relief for 2011 State Fair stage collapse "must have already released all governmental entities and public employees from any liability for loss resulting from the occurrence" via a "form that is satisfactory to the attorney general" in order to receive relief). The $3000 bursar credits in this case might have overcompensated some claimants and undercompensated others, but the ITCA does not prohibit governmental entities from taking a one-size-fits-all approach to settling claims.

[6] The Plaintiffs suggest that the payments were merely gifts; because they raised this suggestion below in a footnote in their summary judgment response, we decline to address it further on appeal.

Section 3 – The Plaintiffs' claims for money had and received and unjust enrichment are tort claims governed by the ITCA and therefore subject to summary judgment.

[26] The only remaining question is whether the Plaintiffs' claims for money had and received and unjust enrichment in Counts 10 and 11 of their amended complaint are tort claims governed by the ITCA and therefore subject to summary judgment. We conclude that they are.

[27] "The ITCA does not provide a statutory definition of 'tort.'" *Chariton v. City of Hammond*, 146 N.E.3d 927, 931 (Ind. Ct. App. 2020), *trans. denied*. But our courts have recognized that a tort is "[a] legal wrong committed upon the person or property independent of contract." *Holtz v. Bd. of Comm'rs of Elkhart Cnty.*, 560 N.E.2d 645, 647 (Ind. 1990) (citation omitted). The Plaintiffs characterize their claims for money had and received and unjust enrichment as quasi-contractual, but those claims were "expressly pled in the alternative to" their contract-based claims, Appellant's App. Vol. 2 at 143, and they seek damages in the amount of the tuition, room, and board that the University collected from them or third parties and wrongfully retained after it wrongfully provided them with mold-infested housing, which harmed them and diminished their college experience. The damages, although purely economic, are the consequence of the University's alleged tortious conduct.[7] In essence,

[7] It is not unusual to have purely economic damages, such as lost wages, medical expenses, or cleanup costs, in tort cases involving personal injury or property damage, such as that alleged here.

then, the Plaintiffs are "claiming a loss of property, and therefore [their] claims sound in tort" for purposes of the ITCA. *Chariton*, 146 N.E.3d at 934 (holding that plaintiff's claims for money had and received and unjust enrichment to recover fees and fines collected by city's allegedly illegal enforcement of property registration ordinance were tort claims governed by ITCA).[8] Consequently, we reverse the trial court's denial of the University's motion for partial summary judgment on Counts 3 through 6, 10, and 11 of the Plaintiffs' amended complaint and remand for further proceedings.

[28] Reversed and remanded.

Kirsch, J., and Mathias, J., concur.

[8] Citing *Nichols v. Minnick*, 885 N.E.2d 1 (Ind. 2008), the Plaintiffs assert that their claims are not tort claims because they seek restitution, not compensatory damages. *See id*. at 4 (stating that compensatory tort damages are designed to place plaintiff "in a position substantially equivalent in a pecuniary way to that which he would have occupied had no tort been committed[,]" whereas restitution "may be measured by the defendant's gain and is therefore appropriate even when the plaintiff has suffered no demonstrable harm.") (citation omitted). This Court rejected a similar argument in *Chariton*, and we see no need to revisit it here. Moreover, the nature of damages requested is not determinative of the underlying nature of a claim.