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ADVANCE SHEET HEADNOTE
February 24, 2025

**2025 CO 9**

**No. 23SC565, *CSU Board of Governors v. Alderman*—Unjust Enrichment—Effect of Express Contract—Statutory or Legislative Law.**

After Colorado State University ("CSU") temporarily transitioned to online classes in the Spring of 2020 due to the COVID-19 pandemic, Renee Alderman and another student filed putative class action lawsuits seeking pro-rata refunds of the amounts they and similarly situated students paid in tuition and student fees for the six-week period during which campus was closed. The students asserted two claims for breach of contract and two claims, in the alternative, for the equitable remedy of unjust enrichment.

The district court dismissed the students' breach of contract claims, finding that CSU had statutory authority under section 23-30-111, C.R.S. (2024), to temporarily suspend operations in the event of "the prevalence of fatal diseases, or other unforeseen calamity" such as COVID-19. The district court later dismissed the unjust enrichment claims, finding that the students' equitable claims and the legally enforceable contract between CSU and the students covered the

same subject matter—the provision of educational services. A split division of the Court of Appeals reversed the district court's decision dismissing the unjust enrichment claims.

The Supreme Court granted certiorari to determine whether an unjust enrichment claim can be properly asserted when it mirrors a contract that (1) covers the same subject matter and (2) remains legally enforceable. The Court now holds that claims for breach of contract and unjust enrichment are mutually exclusive under these circumstances. Consequently, the Court reverses that portion of the division's judgment reinstating the unjust enrichment claims and remands the case with directions to reinstate the district court's judgment in favor of CSU.

**The Supreme Court of the State of Colorado**
2 East 14th Avenue • Denver, Colorado 80203

**2025 CO 9**

**Supreme Court Case No. 23SC565**
*Certiorari to the Colorado Court of Appeals*
Court of Appeals Case No. 22CA1140

**Petitioner:**

Board of Governors of the Colorado State University,

v.

**Respondent:**

Renee Alderman.

**Judgment Reversed**
*en banc*
February 24, 2025

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**JUSTICE BERKENKOTTER** delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ**, **JUSTICE BOATRIGHT**, **JUSTICE GABRIEL**, **JUSTICE HART**, and **JUSTICE SAMOUR** joined**.**
**JUSTICE HOOD** did not participate.

JUSTICE BERKENKOTTER delivered the Opinion of the Court.

¶1 In the Spring of 2020, after Colorado State University ("CSU") temporarily transitioned from in-person to online learning due to the COVID-19 pandemic, Renee Alderman ("Alderman") and Tyler Stokes ("Stokes") (collectively, "the students") each filed putative class action lawsuits against the university seeking to recover part of the tuition and fees that they and all similarly situated students paid to CSU for that semester. They alleged, in a joint complaint filed after their cases were consolidated, that CSU breached its contract (1) to provide in-person learning for which the students had paid tuition and (2) to make available the facilities for which the students had paid fees. They asserted two claims for breach of contract: one pertaining to their tuition payments and the other pertaining to their payment of fees. They also brought two claims, in the alternative, for the equitable remedy of unjust enrichment. Following briefing by the parties, the district court concluded that CSU's enabling statute explicitly granted the university the authority to suspend operations in the event of "the prevalence of fatal diseases, or other unforeseen calamity," § 23-30-111, C.R.S. (2024), and so it dismissed the students' breach of contract claims.

¶2 The court subsequently dismissed the students' only remaining claims, those for unjust enrichment, after it determined that (1) the contract between CSU and the students was legally enforceable (albeit not in the manner the students

sought) and (2) the students could not recover under a theory of unjust enrichment because their unjust enrichment claims and the contract between CSU and the students covered the same subject matter—the provision of educational services.

¶3 Only Alderman appealed, and a split division of the court of appeals reversed the district court's decision dismissing her unjust enrichment claims. *Alderman v. Bd. of Governors of Colo. State Univ.*, 2023 COA 61, ¶ 33, 536 P.3d 831, 838. The division majority concluded that CSU's contract obligations "were obviated when it invoked [section 23-30-111], leaving [Alderman] with no contract rights to enforce." *Id.* at ¶ 29, 536 P.3d at 837.

¶4 We granted certiorari to review the division's opinion and now conclude that it erred as a matter of law in holding that the contract between CSU and Alderman was unenforceable. A contract is not rendered unenforceable merely because it does not provide all the services and protections to which a party claims it is entitled. Here, section 23-30-111 did not make the contract *unenforceable*. Rather, the statutory provision was simply deemed to be part of the contract. And because the statute explicitly authorized CSU to temporarily suspend operations, the district court dismissed Alderman's breach of contract claims. The fact that Alderman was unable to state a *claim* for breach of contract did not render the *contract itself* unenforceable.

¶5 Because Alderman's unjust enrichment claims fail as a matter of law, we reverse the part of the division's judgment that reinstated Alderman's unjust enrichment claims and remand the case with directions to reinstate the judgment of the district court in favor of CSU.

## I. Facts and Procedural History

¶6 CSU is a state institution of higher education established in the Colorado Constitution and by state statute. Colo. Const. art. VIII, § 5; § 23-1-101, C.R.S. (2024); §§ 23-31-101 to -122, C.R.S. (2024). It is a land-grant university that celebrated its sesquicentennial in 2020 in honor of the 150-year anniversary of its founding. The university advertised "superior instruction with a small professor-to-student ratio" of 1-to-16 and "state-of-the-art technology for an ever-changing global economy." Incoming freshmen were required to live on campus for their first year at CSU.

¶7 Because of the COVID-19 pandemic, CSU announced on March 19, 2020, that it would be moving all classes on its Fort Collins campus to remote learning beginning on March 23, 2020. The university then suspended in-person operations, directed students who could move out of on-campus housing to do so, closed campus buildings, restricted access to most campus facilities and services, and transitioned to remote learning for six weeks.

¶8 Alderman was a full-time student at CSU during the Spring 2020 semester when she filed a class action complaint on behalf of all similarly situated students seeking a refund of tuition and fees that she contended CSU wrongfully retained. Her case was ultimately consolidated with a similar class action filed by fellow CSU student Stokes. Their consolidated complaint asserted two claims for breach of contract. The first asserted that CSU had a contractual obligation to provide live, in-person classroom instruction in a physical classroom in exchange for the students' tuition payments. The second claimed that CSU had a contractual obligation to provide access to on-campus athletic events, on-campus computers and technology, and other in-person events in exchange for the students' payment of mandatory student fees.

¶9 The consolidated complaint also included two claims of unjust enrichment. These claims were pled in the alternative to the two breach of contract claims "to the extent it is determined a contract does not exist or otherwise apply." The students asserted in their complaint that CSU unjustly retained their tuition and mandatory student fees even though it failed to provide a full semester of in-person instruction, services, and events.

¶10 The students emphasized in their consolidated complaint that they contracted for an in-person education. CSU, they noted, also offered fully online distance-learning programs that are priced differently than the in-person,

hands-on education offered in Fort Collins. The students stressed that they chose to pay more for an in-person education because of the numerous and distinct benefits, which they claimed included:

- face to face interaction with professors, mentors, and peers;
- access to facilities such as computer labs, study rooms, laboratories, libraries, etc.;
- student governance and student unions;
- extracurricular activities, groups, intramurals, etc.;
- student art, cultures, and other activities;
- exposure to community members of diverse backgrounds, cultures, and schools of thought;
- social development and independence;
- hands-on learning and experimentation; and
- networking and mentorship opportunities.

¶11 As a remedy, the students sought to recover pro rata refunds of the tuition, fees, and other costs that they and all similarly situated students had paid for the services that were suspended during the six weeks when CSU canceled in-person classes, closed most campus buildings, and required all students who could to leave the campus.

¶12 In response, CSU filed a motion to dismiss the consolidated complaint arguing, inter alia, that the students failed to state a claim under C.R.C.P. 12(b)(5). CSU argued that it was specifically authorized by statute to temporarily suspend

operations in the face of a pandemic and that the statutory term was, by operation of law, incorporated into any contract between the students and the university. *Keelan v. Van Waters & Rogers, Inc.*, 820 P.2d 1145, 1148 (Colo. App. 1991), *aff'd*, 840 P.2d 1070 (Colo. 1992). This meant, it asserted, the students' breach of contract claims must fail because section 23-30-111 expressly provides that CSU's board of governors may at any time "temporarily suspend a university in case of fire, the prevalence of fatal diseases, or other unforeseen calamity." CSU emphasized that there could be no breach of contract because the statute explicitly permits temporary suspensions like the one that occurred during the Spring 2020 semester.

¶13 The district court dismissed both breach of contract claims asserted in the consolidated complaint. It did so after concluding that CSU's enabling statute specifically grants the university the authority to suspend operations in the event of "the prevalence of fatal diseases, or other unforeseen calamity." § 23-30-111. And, because "[s]tatutory law which pertains to the terms of a contract is considered part of that contract," *Keelan*, 820 P.2d at 1148, the court held that CSU's authority to temporarily close the school was a term of the contract. Therefore, the court concluded that "any contractual bargain made between [the students] and CSU allowed CSU to close campus and in-person learning" in the face of a pandemic, and "CSU's actions in doing so cannot be considered a breach."

¶14 Several months later, CSU filed a motion for judgment on the pleadings, asking the district court to enter judgment on the students' claims for unjust enrichment. CSU claimed that the parties agreed that a contract existed between the students and the university and, thus, the students were barred from asserting unjust enrichment claims. After all, "a party cannot recover for unjust enrichment by asserting a quasi-contract when an express contract covers the same subject matter because the express contract precludes any implied-in-law contract." *Interbank Invs., LLC v. Eagle River Water & Sanitation Dist.*, 77 P.3d 814, 816 (Colo. App. 2003). CSU acknowledged the two exceptions to this rule: if the express contract fails or is rescinded, or if the unjust enrichment claim covers matters that are outside of or arose after the contract. *Pulte Home Corp. v. Countryside Cmty. Ass'n*, 2016 CO 64, ¶ 64, 382 P.3d 821, 833. It argued, however, that neither of those circumstances applies here.

¶15 In CSU's view, (1) it was undisputed that there was at least an implied-in-fact contract, foreclosing the first exception; and (2) all four claims concerned the provision of educational services and requested the same remedy. Based on this, CSU maintained, there was no real difference between the two breach of contract claims and the two unjust enrichment claims, and consequently the students could not meet either of the *Pulte Home Corp.* exceptions. Accordingly, CSU requested the consolidated complaint be dismissed in its entirety.

¶16 The students opposed the motion, arguing that a party can recover on a quasi-contract theory when that party "will have no right under an enforceable contract." *Interbank*, 77 P.3d at 816 (quoting *Backus v. Apishapa Land & Cattle Co.*, 615 P.2d 42, 44 (Colo. App. 1980)). Even with section 23-30-111 incorporated into the contract, they asserted, it would remain "completely silent on any obligations to pay under such events, let alone prescribe [that CSU] may keep tuition and fees in full in such an event."

¶17 And the students offered a different interpretation of *Pulte Home Corp.*'s unjust enrichment exception that "[a] party generally cannot recover for unjust enrichment . . . where there is an express contract addressing the subject of the alleged obligation to pay." ¶ 64, 382 P.3d at 833. CSU's interpretation incorrectly placed emphasis on the word "subject," the students said, instead positing that the key language was "alleged obligation to pay." Thus, they argued that *Pulte Home Corp.* did not apply because the contract was silent as to CSU's obligation to repay tuition or fees in the event of a temporary campus closure. As a result, the students maintained, they should be allowed to develop their unjust enrichment claims.

¶18 In the students' view, a party seeking to recover under an unjust enrichment theory must only show that "(1) the defendant received a benefit (2) at the plaintiff's expense (3) under circumstances that would make it unjust for the defendant to retain the benefit without commensurate compensation." *Lewis v.*

*Lewis*, 189 P.3d 1134, 1141 (Colo. 2008). An unjust enrichment claim, they urged, is "designed to undo the benefit to one party that comes at the unfair detriment of another." *Id.* The students posited that because they and all similarly situated students paid CSU tuition and fees for a full in-person semester and because the in-person semester was cut short, CSU would be unjustly enriched if it was not compelled to refund the students accordingly.

¶19 Unpersuaded, the district court granted CSU's motion, concluding that the students' unjust enrichment claims do not fall within either of the *Pulte Home Corp.* exceptions. To begin, the court concluded that the undisputed evidence of an implied-in-fact contract covering the same subject matter meant the unjust enrichment claims could not proceed. Allowing such claims, the court explained, would "impermissibly allow for and greatly expand the basis for unjust enrichment claims." The unjust enrichment claims, the court observed, "cannot proceed as a mere recasting of the breach of contract claim when they cover the same subject matter."

¶20 And, while an implied-in-fact contract between the students and CSU may be silent as to any obligation to issue refunds or repayments, the district court observed, it "ha[d] not found any support for the idea that an unjust enrichment claim can serve as a contract gap-filler, or may be asserted where a contract

covering the same subject matter omits a specific term that the parties did not include or contemplate."

¶21 Finally, the district court held that the implied-in-fact contract had not been rescinded or failed, and that failing to plausibly plead a breach of contract claim does not entitle the students to assert unjust enrichment claims. Accordingly, the district court granted CSU's motion for judgment on the pleadings.

¶22 Alderman—without Stokes—subsequently appealed both orders. A division of the court of appeals upheld the dismissal of the breach of contract claims, concluding that the authority statutorily granted to CSU to temporarily suspend operations in the event of a pandemic like COVID-19 precluded Alderman from stating claims for breach of contract against the university. *Alderman*, ¶ 20, 536 P.3d at 836.

¶23 Turning to the unjust enrichment claims, the division disagreed with the district court, instead concluding that "the contract obligations of CSU were obviated when it invoked the statute, leaving [Alderman] with no contract rights to enforce" because "the invocation of [section 23-30-111] has made her contract claims unenforceable." *Id.* at ¶¶ 29, 32, 536 P.3d at 837–38.

¶24 In reaching this conclusion, the division analogized Alderman to the real estate broker in *Backus*. *Id.* at ¶ 32, 536 P.3d at 837. In *Backus*, a real estate broker licensed in Colorado entered into a listing agreement with a property owner to sell

its real property. 615 P.2d at 43. The broker also entered into a separate agreement with Backus, a real estate broker licensed in Texas, to cooperate in seeking a buyer for the property and to share in any commission due under the listing agreement. *Id.* After Backus helped the Colorado broker find a buyer for the property, the property owner breached the listing agreement by withdrawing the property from sale. *Id.* When the property owner refused to pay the fee due under its listing agreement with the Colorado broker, Backus, the Texas broker, sued the property owner, asserting claims based on (1) his purported rights under the listing agreement, (2) an assignment of rights he received from the Colorado broker, and (3) unjust enrichment. *Id.* The district court granted the property owner's motion for summary judgment as to all three claims, reasoning that Backus was precluded under Colorado law from entering into a contract for the sale of Colorado property because he was not licensed as a real estate broker in Colorado. *Id.*

¶25 A division of the court of appeals affirmed in part and reversed in part. *Id.* at 43–44. It reasoned that Backus could not pursue a claim directly against the property owner because he was not a party to the listing agreement. *Id.* at 43. In fact, Colorado law barred such contracts. *Id.* But the division permitted the assignment and unjust enrichment claims to proceed, concluding that if Backus's assignment claim failed, he would have no rights under an enforceable contract. *Id.* at 44.

¶26 In the present case, the division majority below saw Alderman's situation much like Backus's: Alderman would have no right to enforce her claims for breach of the implied-in-fact contract in light of section 23-30-111. *Alderman*, ¶ 32, 536 P.3d at 837–38. Thus, the division reasoned that her unjust enrichment claim could proceed. *Id.*, 536 P.3d at 838.

¶27 Judge Tow dissented as to this part of the division's opinion. *Id.* at ¶ 36, 536 P.3d at 838 (Tow, J., concurring in part and dissenting in part). He concluded that, "[b]ecause the contract between Alderman and CSU was legally enforceable (albeit not in the manner Alderman sought), was not abrogated or rescinded, and related to the same subject matter as the allegations underpinning Alderman's unjust enrichment claim, she cannot pursue a quasi-contractual claim such as unjust enrichment." *Id.* at ¶ 42, 536 P.3d at 839. Specifically, Judge Tow concluded that, because the parties agreed that they entered into an implied-in-*fact* contract for the provision of educational services, additionally seeking to impose an implied-in-*law* contract governing the exact same services for the purposes of Alderman's unjust enrichment claim was something "she simply cannot do." *Id.* at ¶ 37, 536 P.3d at 838. In support of his analysis, Judge Tow relied on *Interbank*, which held that "a party cannot recover for unjust enrichment by asserting a quasi-contract when an express contract covers the same subject matter because the

express contract precludes any implied-in-law contract." *Id.* (alteration omitted) (quoting *Interbank*, 77 P.3d at 816).

¶28 In Judge Tow's view, the majority misapplied *Backus*. *Id.* at ¶ 38, 536 P.3d at 838. The case, he observed, "does not stand for the proposition that if a party *has a contract* but cannot recover under it (because the other party's actions did not breach that contract), the party may alternatively pursue an unjust enrichment claim." *Id.* at ¶ 40, 536 P.3d at 839. "Instead," he noted, "*Backus* holds merely that where a party *may not be able to* establish the existence of an enforceable contract at all, that party may recover for unjust enrichment." *Id.* (emphasis added). In his view, "a contract does not 'fail' merely because it does not provide all the services and protections to which one of the contracting parties claims entitlement." *Id.* at ¶ 41, 536 P.3d at 839.

¶29 CSU petitioned this court for certiorari review. We granted the petition to determine whether an unjust enrichment claim can be properly asserted when it mirrors a contract that (1) covers the same subject matter and (2) remains legally enforceable.[1] We now hold that claims for breach of contract and unjust

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[1] Specifically, we granted certiorari to review the following issue:

1. Whether a student can assert a claim for unjust enrichment based on CSU's campus closure where the relationship between CSU and its students is governed by a contract that permits CSU to close campus in the presence of a fatal disease.

enrichment are mutually exclusive under these circumstances. The result is that Alderman's claims against CSU for unjust enrichment fail as a matter of law.

## II. Analysis

¶30 Understanding the nature of this dispute requires us to describe the relationship between overlapping claims for breach of contract and unjust enrichment. We start by outlining the applicable standards of review before moving on to the relevant legal principles. We then use these as a guide to examine the viability of Alderman's unjust enrichment claims.

### A. Standard of Review

¶31 Rulings on a motion for judgment on the pleadings are reviewed de novo. *Melat, Pressman & Higbie, L.L.P. v. Hannon Law Firm, L.L.C.*, 2012 CO 61, ¶ 17, 287 P.3d 842, 847. Judgment on the pleadings is appropriate if, from the pleadings, the moving party is entitled to judgment as a matter of law. *City & Cnty. of Denver v. Qwest Corp.*, 18 P.3d 748, 754 (Colo. 2001).

¶32 An unjust enrichment claim is an equitable cause of action. *City of Arvada ex rel. Arvada Police Dep't v. Denver Health & Hosp. Auth.*, 2017 CO 97, ¶ 37, 403 P.3d 609, 616. While equity rulings generally lie within the discretion of the trial court, appellate courts review de novo whether the trial court correctly understood the appropriate test for unjust enrichment. *Lewis*, 189 P.3d at 1141.

¶33 Finally, we review questions of statutory interpretation de novo. *Pulte Home Corp.*, ¶ 24, 382 P.3d at 826. We give effect to words and phrases according to their plain and ordinary meaning. *Denver Post Corp. v. Ritter*, 255 P.3d 1083, 1089 (Colo. 2011). If the statutory language is clear, we apply it as written and need not resort to other rules of statutory construction. *Vallagio at Inverness Residential Condo. Ass'n v. Metro. Homes, Inc.*, 2017 CO 69, ¶ 16, 395 P.3d 788, 792.

## B. Relevant Legal Authority

¶34 A plaintiff suing for breach of contract bears the burden of proving the following elements by a preponderance of the evidence: (1) the existence of a contract; (2) the plaintiff's performance of the contract or justification for nonperformance; (3) the defendant's failure to perform the contract; and (4) the plaintiff's damages as a result of the defendant's failure to perform the contract. *Univ. of Denver v. Doe*, 2024 CO 27, ¶ 46, 547 P.3d 1129, 1139. These elements apply to the enforcement of an express contract as well as to an implied-in-fact contract. *Tuttle v. ANR Freight Sys., Inc.*, 797 P.2d 825, 829 (Colo. App. 1990) ("There is no difference in legal effect between express and implied in fact contracts."). We have previously articulated the difference between a contract implied-in-fact and an express contract as follows:

> [A] contract implied in fact is based on the conduct of the parties to the agreement and it is the conduct itself which establishes the agreement. There is little fundamental difference between an express contract and a contract implied in fact. An express contract is

> evidenced by the parties' written or oral words. A contract implied in fact arises from the parties' conduct which evidences a mutual intention to enter into a contract. In both cases, a contract is created by the meeting of the minds to contract with each other.

*Agritrack, Inc. v. DeJohn Housemoving, Inc.*, 25 P.3d 1187, 1192 (Colo. 2001) (alteration in original).

¶35 Unjust enrichment, in contrast, is a form of quasi-contract or contract implied-in-law that does not depend on a promise or privity between the parties. *DCB Constr. Co. v. Cent. City Dev. Co.*, 965 P.2d 115, 119 (Colo. 1998). The test for recovery under an unjust enrichment theory requires a plaintiff to show that (1) at the plaintiff's expense (2) the defendant received a benefit (3) under circumstances that would make it unjust for the defendant to retain the benefit without paying. *Id.* at 119–20; *accord Robinson v. Colo. State Lottery Div.*, 179 P.3d 998, 1007 (Colo. 2008).

¶36 When a party asserts claims for both breach of contract and unjust enrichment, further analysis may be required in the face of a motion to dismiss. This is because our jurisprudence holds that breach of contract and unjust enrichment claims involving the same subject matter are mutually exclusive. Thus, a party may not assert a claim for unjust enrichment if a valid contract covers the same subject matter. *Pulte Home Corp.*, ¶ 64, 382 P.3d at 833 (holding that a party generally cannot recover for unjust enrichment when an express contract

addresses the subject of the alleged obligation to pay). This is true even if the plaintiff is unable to recover under the contract. *See Interbank*, 77 P.3d at 818–19.

¶37 Colorado appellate courts have recognized only two exceptions to this rule. A party may still recover for unjust enrichment when (1) the express contract fails or is rescinded or (2) the claim covers matters that are outside of or arose after the contract. *Pulte Home Corp.*, ¶ 64, 382 P.3d at 833.

### C. Application

¶38 Turning to the question before us, we hold that Alderman cannot properly state claims for unjust enrichment against CSU because her valid, enforceable contract with the university covers the same subject matter as those claims.

¶39 There is no dispute that an implied-in-fact contract existed between CSU and Alderman. *Alderman*, ¶ 9, 536 P.3d at 834. She paid tuition and fees, and in exchange, CSU provided educational services. This comports with the general proposition that the relationship between students and universities is contractual in nature. *CenCor, Inc. v. Tolman*, 868 P.2d 396, 398 (Colo. 1994).

¶40 The division concluded that "the invocation of a Colorado statute has made [Alderman's] contract claims unenforceable." *Alderman*, ¶ 32, 536 P.3d at 837–38. Critically, however, a contract does not fail merely because it does not provide all the services and protections to which a party claims they are entitled. Rather, a contract fails only when it becomes legally unenforceable. Failing to make this

distinction is where the division majority erred. It conflated the failure of Alderman's breach of contract *claim* with the failure of the contract *itself*.

¶41 The statutory provision in play here, section 23-30-111, granted CSU the authority to suspend university operations in the event of "the prevalence of fatal diseases, or other unforeseen calamity." This authority was, by operation of law, incorporated into the parties' contract, meaning that the contract explicitly allowed the university to temporarily suspend operations. This is why Alderman could not state a claim for breach of contract and why the district court dismissed her claims. But Alderman's inability to prove that the university breached the contract by temporarily suspending operations does not render the contract itself void or unenforceable. CSU and Alderman retained all other contractual rights contained in their agreement. *See CenCor, Inc.*, 868 P.2d at 399.

¶42 The division also erred in comparing Alderman's claims to those of the Texas real estate broker in *Backus*. *Alderman*, ¶ 32, 536 P.3d at 837–38. *Backus* stands for the proposition that a party may be able to recover for unjust enrichment when that party is unable to establish the existence of an enforceable contract. 615 P.2d at 44. It does not hold that a plaintiff may pursue an unjust enrichment claim when that plaintiff's breach of contract claim fails because the defendant did not breach the contract. *Backus*, accordingly, does not support the division majority's analysis.

¶43 Finally, Alderman contends that she should be able to assert claims for unjust enrichment because her claims ultimately seek a remedy—a demand for a pro-rata refund of tuition and fees—that is not covered by her contract with CSU. We disagree. Alderman's argument is essentially that unjust enrichment should serve as a gap-filler provision to provide a remedy when a contract is silent about a desired term. She cites no authority in support of this proposition and essentially conceded during oral argument that she is asking the court to expand the reach of this court's unjust enrichment jurisprudence. She offers no principled limit to this expansion, which in our view would effectively obliterate the difference between breach of contract and unjust enrichment claims. This, of course, is something we simply cannot do.

## III. Conclusion

¶44 For these reasons, we hold that a party cannot properly state a claim for unjust enrichment when a legally enforceable contract exists that covers the same subject matter and that contract has not been abrogated or rescinded. Because Alderman's unjust enrichment claims fail as a matter of law, we reverse the portion of the division's judgment reinstating Alderman's unjust enrichment claims and remand the case with directions to reinstate the district court's judgment in favor of CSU.