

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF LYNCHBURG

JENNA DODGE, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. CL07-1917
)	
RANDOLPH COLLEGE,)	
)	
Defendant.)	

**DEFENDANT'S MOTION TO STRIKE
PLAINTIFFS' DEMAND FOR TRIAL BY JURY**

Plaintiffs have demanded a jury "for all issues so triable pursuant to Rules 3:21 and 3:22 of the Rules of the Supreme Court of Virginia." Simply put, there are no such issues presented here.

Rule 3:21(a) provides:

Jury Trial Situations Unchanged --- The right of trial by jury as declared by the Constitution of Virginia, or as given by an applicable statute or other authority, is unchanged by these rules, and shall be implemented as established law provides. Established practice for the trial and decision of equitable claims by the judge alone shall be continued.

Rule 3:22 provides no additional rights to jury trial, just procedures when a jury has been properly demanded pursuant to Rule 3:21.

The Virginia Constitution does not and never has provided any right to a jury in a case such as this, in which Plaintiffs seek purely equitable remedies. As stated in Bethel Inv. Co. v. City of Hampton, 272 Va. 765, 769, 636 S.E.2d 466, 469 (2006):

The Constitution of Virginia, art. I, § 11, provides in pertinent part: "That in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred." This provision is not applicable to proceedings in which there was no right to jury trial when the Constitution was adopted, such as ordinary suits in chancery, but it is clearly

applicable to common-law actions seeking to recover damages. Stanardsville Vol. Fire Co. v. Berry, 229 Va. 578, 583, 331 S.E.2d 466, 469 (1985).

And as stated in Wright v. Castles, 232 Va. 218, 222, 349 S.E.2d 125, 128 (1986):

[W]hen a party seeks injunctive relief, he must sue in equity. In equity, a litigant has no constitutional right to trial by jury, Forbes & Co. v. So. Cotton Oil Co., 130 Va. 245, 263-64, 108 S.E. 15, 21 (1921), and, absent a plea in equity, see Code § 8.01-336(D), no statutory right.

Under black letter Virginia law, this case seeking purely equitable relief presents no issues triable to a jury.

Plaintiffs' reliance on Va. Code § 8.01-188 is misplaced. That statute gives the trial court discretion to submit interrogatories to a jury "when a declaration of right or the further granting of further relief based thereon shall involve the determination of issues of fact triable by a jury." As noted above, there are no such issues here.

Apparently realizing the weakness of their demand for a traditional jury, Plaintiffs ask the Court to empanel an advisory jury pursuant to Va. Code § 8.01-336(E). Advisory juries are discretionary. The Court should exercise its discretion against empanelling an advisory jury, because (a) the Court does not need any help in determining the facts, and (b) an advisory jury will make the trial that much more time-consuming and expensive.

Plaintiffs' request for a jury – traditional or advisory – is designed to bring unnecessary drama to the courtroom. There are Four Paintings at issue.¹ Either there are, or there are not, restrictions on the College's right to sell those Four Paintings. If there were any such restrictions (which there are not), they could come from the law (in which case the Court can so find), or they could come from the documents effecting the conveyances of those four pieces or other

¹ Plaintiffs seek to bring the Smith Trust art and other art with the case, but their effort to do so falls well outside the leave this Court gave to amend. See the College's Motion to Strike Plaintiffs' Amended Complaint, filed simultaneously herewith.

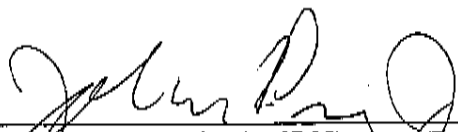
evidence surrounding them. These facts will be simple for the Court to determine, without the help of advisors, without the expenditure of extra time and money, and without the clutter of drama.

For the foregoing reasons, Plaintiffs' jury demand should be denied.²

Respectfully submitted,

RANDOLPH COLLEGE

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² In the event the Court empanels either type of jury (which it should not), then the College reserves the right to move for a change of venue for the trial (not for a different Judge, but a different jury pool). The College reserves the right to present evidence on this issue. But most fundamentally, it would be out of order for the Court to empanel a jury of persons whom Plaintiffs claim directly to represent, i.e., the "citizens of Lynchburg," (Am. Compl., ¶82), and "the Lynchburg public." (*Id.* at ¶94.) This would be error squared.

CERTIFICATE OF SERVICE

I certify that on January 4th, 2008, a true and accurate copy of the foregoing was delivered by facsimile and by first-class mail to:

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