

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF LYNCHBURG

JENNA DODGE,)
SARAH HASSMER,)
HAYLEY J. MAXWELL,)
LAURA MCKEAN-PERAZA,)
KELSEY MCCUNE,)
JENNIFER C. MULLINS,)
ALICE DAMMEYER PRIEBE,)
JESSICA WHITTLE,)
FRANCES PENDLETON ELLIOTT,)
ELEANOR PENDLETON MONAHAN,)
MARGARET WILLIAMS,)
ELLEN S. AGNEW,)
PAUL WHITEHEAD, JR.,)
SANDRA WHITEHEAD,)
ROBERTA SCRIVENEER,)
ROY CLINTON JOHNS,)
ANNE ADAMS ROBERTSON MASSIE,)
AMANDA SANDOS, AND)
LAURA KATZMAN,)
Plaintiffs,)

Case No. CL07001917-00

v.)

RANDOLPH COLLEGE, f/k/a)
THE TRUSTEES OF RANDOLPH-MACON)
WOMAN'S COLLEGE, INCORPORATED,)
Defendant.)

ORDER

This 8th day of November, 2007, came the parties, by counsel, and were heard ore tenus, on Defendant's Demurrer and Plaintiffs' Opposition thereto, and on Plaintiffs' Motion for Temporary Injunction, Defendant's Opposition thereto and Plaintiffs' Reply.

Upon consideration thereof and upon consideration of the evidence presented at the hearing, it is hereby ORDERED, ADJUDGED AND DECREED that the Demurrer is DENIED for the reasons stated on the record, as shown in the transcript of the hearing, attached

hereto as **Exhibit A**. Plaintiffs' motion for leave to amend the Complaint is hereby **GRANTED**. Defendant shall file its responsive pleadings within twenty-one (21) days following service of the Amended Complaint upon Defendant.

Further, Plaintiffs' Motion for Temporary Injunction is **GRANTED**, for the reasons stated on the record, as shown in **Exhibit A**.

Accordingly, it is **ORDERED** that, for a period of six months from the issuance of this Order, upon Plaintiffs' posting of a ten million dollar (\$10,000,000) bond with surety, pursuant to Va. Code Ann. § 8.01-631, Defendant is enjoined from selling, assigning, transferring, or otherwise disposing the following four valuable and unique paintings: *Men of the Docks* by George Bellows, *A Peaceable Kingdom* by Edward Hicks, *Through the Arroyo* by Ernest Martin Hennings, and *Troubador* by Rufino Tamayo, from the Maier Museum of Art at the College to augment the College's general endowment fund.

Let the Clerk send an attested copy of this Order to all counsel of record.

BY THE COURT:

11/16/07

K. J. Leggett Mosby, Jr.

Judge

SEEN and AGREED TO, except OBJECTED TO with respect to the bond requirement, the

*failure to order return of
the paintings + failure to
enjoin the alteration,
fracturing, restoring or
otherwise preparing
for sale, TJC.*

Anthony F. Troy

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SEEN and OBJECTED TO:



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Exhibit A

**PARTIAL TRANSCRIPT OF PROCEEDINGS, JUDGE'S RULING:
THE HONORABLE J. LEYBURN MOSBY, JR., PRESIDING**

**November 8, 2007
Lynchburg, Virginia
2:08 p.m. - 6:53 p.m.**

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ELLEN S. AGNEW; PAUL WHITEHEAD, JR.; SANDRA WHITEHEAD;
ROBERTA SCRIVENER; ROY CLINTON JOHNS; ANNE ADAMS
ROBERTSON MASSIE; AMANDA SANDOS; and LAURA KATZMAN,

Plaintiffs,

Case No.:
C107-1917

-vs-

RANDOLPH COLLEGE, E/k/a THE TRUSTEES OF
RANDOLPH-MACON WOMAN'S COLLEGE, INCORPORATED,

Defendant.

PARTIAL TRANSCRIPT OF PROCEEDINGS, JUDGE'S RULING:

THE HONORABLE J. LEYBURN MOSBY, JR., PRESIDING

November 8, 2007
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* * * *

EVANS & COMPANY COURT REPORTERS
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Reported by: BARBARA BURNETTE, CCR# 0315050

<p style="text-align: right;">Page 2</p> <p>1 Appearances:</p> <p>2 ANTHONY F. TROY, ESQ. and</p> <p>3 MELISSA J. ROBERTS, ESQ. and</p> <p>4 THEODORE J. CRADDOCK, ESQ.</p> <p>Attorneys for the Plaintiffs</p> <p>5</p> <p>6 DENNIS L. BELCHER, ESQ. and</p> <p>7 BRIAN E. PUMPHREY, ESQ. and</p> <p>8 BERNARD C. BALDWIN, III, ESQ. and</p> <p>JOHN M. PERRY, JR., ESQ.</p> <p>Attorneys for the Defendant</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15 **** Denotes portions of the proceedings</p> <p>reported but not transcribed.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 makes this job easier and more difficult</p> <p>2 all at the same time.</p> <p>3 The legal system in Virginia is not a</p> <p>4 panacea for all ills in society, nor should</p> <p>5 it be really second guess decisions of</p> <p>6 independent corporations. However, the</p> <p>7 legal system is a proper forum to address</p> <p>8 issues such as this. It's a lot better</p> <p>9 than having to result into fisticuffs or</p> <p>10 duels.</p> <p>11 So I -- I just finished reading an</p> <p>12 article by Mr. Donovan -- or</p> <p>13 Professor Donovan on the -- John Randolph,</p> <p>14 for whom the college is named. And</p> <p>15 John Randolph and Henry Craig resulted</p> <p>16 to -- in a duel that he wrote an article</p> <p>17 about. And this is much more preferable,</p> <p>18 even though it's more difficult for the</p> <p>19 judge.</p> <p>20 The issues in the -- in the demurrer</p> <p>21 and the temporary injunction are hopelessly</p> <p>22 intertwined, and it's hard to separate the</p> <p>23 issues. And the argument is basically the</p> <p>24 same in both issues.</p> <p>25 I have a concern as to whether or not</p>
<p style="text-align: right;">Page 3</p> <p>1 November 8, 2007 PROCEEDINGS Lynchburg, Virginia</p> <p>2</p> <p>3 ****</p> <p>4</p> <p>5 THE COURT: All right, all right.</p> <p>6 We're going to take a recess while I delve</p> <p>7 into the mischief of this case.</p> <p>8</p> <p>9 (Recess taken.)</p> <p>10</p> <p>11 THE COURT: All right. Thank you,</p> <p>12 counsel.</p> <p>13 This has been one of the most</p> <p>14 difficult cases that I've had to deal with</p> <p>15 in my term as a judge. And, as I said,</p> <p>16 there are two issues in the case. One is a</p> <p>17 demurrer, and the second is a temporary</p> <p>18 injunction.</p> <p>19 For the general public, there's</p> <p>20 voluminous pleadings. Exhibits, affidavits</p> <p>21 have been filed in this case. It's kept me</p> <p>22 busy for the last two weeks reading for</p> <p>23 every day and every night on exhibits and</p> <p>24 motions. And the attorneys involved in</p> <p>25 this case are of superior quality, and that</p>	<p style="text-align: right;">Page 5</p> <p>1 I'm trying this case on the pleadings or on</p> <p>2 the factual issues because there's so many</p> <p>3 affidavits and exhibits that are referenced</p> <p>4 in the pleadings.</p> <p>5 As the attorneys know, if there are</p> <p>6 factual issues in dispute on a demurrer,</p> <p>7 the Court should hear the case on full</p> <p>8 trial.</p> <p>9 The law on demurrer in Virginia is the</p> <p>10 pleadings -- demurrer and the pleadings</p> <p>11 accept as true all facts properly pled. It</p> <p>12 does not admit as true conclusions of law.</p> <p>13 If factual allegations are true but</p> <p>14 there's no legal liability or cause of</p> <p>15 action on the defendant, demurrer should be</p> <p>16 sustained. However, granting a demurrer in</p> <p>17 Virginia is generally not favored by the</p> <p>18 Supreme Court or this Court as the -- both</p> <p>19 of us -- or both courts want to give all</p> <p>20 interested parties in litigation an</p> <p>21 opportunity to be heard on the merits. We</p> <p>22 don't want to short-circuit anyone by</p> <p>23 granting a demurrer.</p> <p>24 If a demurrer is sustained, then</p> <p>25 generally my policy has been to allow the</p>

2 (Pages 2 to 5)

<p style="text-align: right;">Page 6</p> <p>1 complainant to amend pleadings to state a 2 cause of action. And that's consistent 3 with what I do in all cases. 4 The two issues in this case are 5 whether or not the complaints on the 6 demurrer -- whether or not the complaint 7 states a cause of action, whether or not 8 the complainants, or the plaintiffs, have 9 any standing. 10 Well, Mr. Troy has alleged five 11 reasons for why they have a -- why the 12 complainants have standing and -- or why 13 they have a cause of action. I'm sorry. 14 He says that they're asking for 15 declaratory relief in -- in the pleadings, 16 and that's correct. 17 He says that Section 57-57(N) says 18 that charitable assets cannot can be 19 disposed of except for charitable purposes 20 and that the Court should grant ancillary 21 relief in the other proceeding in the 22 injunction case and that the -- that a 23 charitable trust exists in this case and 24 there's a breach of the charitable trust. 25 I agree with the college's counsel</p>	<p style="text-align: right;">Page 8</p> <p>1 that he wouldn't have donated it if -- 2 under -- he was the under the impression, 3 he thought it was a permanent art 4 collection. 5 Ms. Williams said that she came to 6 school for the art program, the museum 7 program. The -- there are other donors 8 that are parts of this pleadings, other 9 students that are parts of this pleading, 10 other alumni that are parts of the 11 pleading. 12 And the law on standing -- according 13 to the briefs from the attorneys, the 14 question of standing depends on whether a 15 party has alleged a personal stake in the 16 outcome of the controversy. And then it 17 cites the case of Environmental Defense 18 Fund versus Virginia State Water Control 19 Board. 20 The purpose of standing is to ensure 21 that the dispute sought to be adjudicated 22 will be presented in an adversary contest 23 in a form historically used for judicial 24 resolution. 25 The college alleges that the</p>
<p style="text-align: right;">Page 7</p> <p>1 that all of that's not pled in the 2 pleadings. And, however, I think the 3 pleadings do state enough to state a cause 4 of action and would allow the complainants, 5 or plaintiffs, to amend their complaint to 6 conform with the argument that they made 7 here today. 8 The next issue is the standing. And 9 both parties addressed the Holt case out of 10 California. And most attorneys know that 11 Virginia courts don't give California much 12 precedent in decisions. And that case is 13 really not dispositive of the issues in 14 here -- this case. 15 The college has alleged that the 16 complainants have no legal or beneficial 17 interest in the art. They don't own any 18 art. They didn't donate any of the art and 19 really have no personal interest in the 20 art, that they -- the harm to them would be 21 no greater than any other citizens of the 22 community. 23 On the other side of the coin, 24 Judge Whitehead testified that he donated 25 art -- or money to the college for art,</p>	<p style="text-align: right;">Page 9</p> <p>1 complainants, or the plaintiffs, are no 2 different than any other member of the 3 general public. However, this Court is 4 going to find that the parties have 5 sufficient standing; that the student -- 6 the particular student that went to the 7 college relied on the alumni broch -- the 8 catalog for admission to the college 9 specifically set forth the Maier Museum in 10 the program and it mentioned the -- one of 11 the pieces of art, the Bellows art to be 12 sold here by the -- mentioned Bellows and 13 his arts that she could study. And I think 14 they have set forth enough sufficient -- 15 even though there's a lot of factual 16 dispute that I think really needs to be 17 resolved in a full hearing on this matter, 18 but they've set forth enough to allege that 19 they have standing to be involved in this 20 controversy. 21 And it's not so much related to the 22 two suits that are now appeal -- are 23 appealed to the Supreme Court because I 24 really don't think that the issues in this 25 case are the relative to the issues in</p>

<p style="text-align: right;">Page 10</p> <p>1 those cases, that's the coed issue, this is 2 an art sale issue, but I think there is 3 some relationship perhaps to the Smith 4 trust fund issue case that's now pending. 5 And, for those reasons, I would find that 6 they have standing. 7 And so because of the factual disputes 8 and the -- and my finding with regard to 9 the cause of action and the standing, I'm 10 going to overrule the demurrer. 11 And that leads me to the next issue of 12 the Injunction: As the attorneys know, the 13 law in the -- in the demurrer case is -- 14 and whether or not and -- In the Injunction 15 is whether or not -- there are four things 16 the Court has to decide as to whether or 17 not an Injunction should be issued: One is 18 irreparable harm to the complainants, or 19 the plaintiffs; two is the likelihood of 20 harm to the defendants; three is the 21 likelihood of the plaintiffs' success on 22 the merits; and four is public interest. 23 The Court clearly finds there's 24 irreparable harm to the college. The 25 college is -- you know, it's facing a</p>	<p style="text-align: right;">Page 12</p> <p>1 of this case and might not. That's -- 2 that's sort of a flip of the coin in this 3 Court's opinion based on how the evidence 4 will be developed. 5 The most compelling issue with this 6 Court is the public interest. And we have 7 significant public interest on both sides. 8 We have the public interest to keeping 9 Randolph College going and -- and be a 10 successful institution for the public, not 11 only for the Lynchburg community but for 12 the students at the college and for the 13 people that -- the students that have 14 graduated from there. 15 And, then, the other side of that coin 16 is we have significant public interest in 17 the art program and -- and the distribution 18 of art. And the Bellows artwork is 19 obviously the centerpiece of the 20 Mayer Museum, which has been a focal point 21 of the college in its brochures and 22 advertising. 23 And since the 1920s the Mayer Museum 24 has been a significant -- not only the art 25 now in the Mayer Museum, has been a</p>
<p style="text-align: right;">Page 11</p> <p>1 controversy in the impending deadline with 2 the SACS program. They need to raise money 3 to create -- raise the endowment to -- to 4 be in line with trying to -- with what 5 other colleges in the country are doing as 6 far as using their endowment to support the 7 college. 8 On the other side of the coin, the 9 complainants also have irreparable harm if 10 these four pieces of art are sold and gone 11 from the museum and the community. They 12 can't be ever be replaced. And, clearly, 13 they, particularly the Bellows painting, 14 have significant value. All of them have 15 significant value. And the -- I think that 16 the -- there's irreparable harm if this art 17 leaves without a full and fair hearing on 18 the issues. 19 The next issue is the likelihood of 20 success on the merits. The -- as I've 21 said, I -- I -- based on my prior rulings, 22 I don't think that these matters have 23 any -- this case has any real connection 24 with the cases that are now on appeal, but 25 the plaintiff might succeed on the merits</p>	<p style="text-align: right;">Page 13</p> <p>1 significant asset for the public interest 2 in that nine thousand people from Lynchburg 3 have gone through the museum in the past 4 year. Majority of those is either students 5 or people from the local area. So there's 6 significant public interest in the art at 7 the museum and in particular these four 8 pieces of art. 9 So for -- when weighing and balancing 10 these issues, which is difficult to do, I 11 think that the harm if the art is sold is 12 greater than the harm if the art is not 13 sold. 14 I can't believe that the SACS people, 15 with all the college has done to correct 16 their financial problems, laying off 17 professors, cutting out courses and 18 attempting to sell the art, that 19 Ms. Wheelan, who's president of the SACS 20 Association, and the president of the 21 community college here, from the letter she 22 wrote that she didn't require the college 23 to sell the art, I can't believe that that 24 entity with all the college has done would 25 put them on probation, you know, or even --</p>

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1 you know, they might carry the matter over
 2 for further investigation, but I can't
 3 believe on what the college has done that
 4 they would do anything to affect the future
 5 of Randolph College.
 6 And that leads me to the final issue:
 7 If I grant an injunction, there has to be a
 8 bond. So on -- Section 8.01-63 -- 631 of
 9 the Code of Virginia requires on an
 10 temporary injunction for the Court to grant
 11 a bond.
 12 There's significant amounts of monies
 13 involved. The college -- the value of the
 14 artwork is upward of over forty million
 15 dollars based on Christie's affidavit. And
 16 loss -- a delay over a few years, they're
 17 alleging the proceeds could diminish from
 18 three point two million to thirteen point
 19 five million, the loss of investment of
 20 this money would be three point eight
 21 million to five point four six million, for
 22 a total projected loss of seven to nineteen
 23 million.
 24 In addition to that, there is -- as
 25 the college points out, they have other

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1 Your Honor.
 2 THE COURT: All right.
 3 MR. TROY: Thank you, Your Honor.
 4 THE COURT: All right.
 5 MR. BELCHER: Objection to the ruling
 6 but not the bond.
 7
 8 (Discussion was held off the record.)
 9
 10 MR. TROY: Your Honor, we would want
 11 to note an objection with regard to the
 12 amount of the bond.
 13 THE COURT: That's fine.
 14 MR. TROY: How much time would we have
 15 to post the bond?
 16 THE COURT: Well, the injunction is
 17 not going into effect until you post the
 18 bond.
 19 MR. TROY: All right.
 20 THE COURT: So if you want to stop the
 21 sale, you've got to either, one, post the
 22 bond or this is a final order that either
 23 side can take up and ask the Justice to
 24 amend or adjust my ruling.
 25 MR. TROY: All right.

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1 exposure in the event the SACS people don't
 2 agree with the Court's opinion on what's
 3 going on at Randolph College.
 4 And so there needs to be a significant
 5 amount of bond. And weighing all the
 6 equities in this case, I would set a ten
 7 million dollar bond on this case to enter
 8 the temporary injunction.
 9 The temporary injunction requires --
 10 Statute of Virginia as far as injunctions
 11 would be to insure all damages in the event
 12 that the college prevails on the bond -- on
 13 or on the -- in the court proceedings. And
 14 that's according to the statute on that,
 15 gentlemen.
 16 So, Mr. Troy, I'm going to ask you to
 17 prepare an order.
 18 And, Mr. Belcher, I'm going to ask you
 19 to prepare the bond.
 20 MR. BELCHER: Is this a bond of
 21 surety, Your Honor?
 22 THE COURT: Bond of surety, right.
 23 And both sides can note their
 24 objections and appeal the Court's decision.
 25 MR. BELCHER: Objection noted,

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1 (Discussion was held off the record.)
 2
 3 MR. TROY: Thank you, Your Honor.
 4 THE COURT: Anything --
 5 MR. TROY: We'll have --
 6 THE COURT: -- else for anybody?
 7 MR. TROY: No.
 8 THE COURT: Thank you, gentlemen. You
 9 did an excellent job.
 10 MR. TROY: Thank you.
 11 MR. BELCHER: Thank you, Judge.
 12
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 14
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 16 (Proceedings concluded at 6:52 p.m.)
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<p style="text-align: right;">Page 18</p> <p>1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:</p> <p>2</p> <p>3 I, Barbara Burnette, Court Reporter,</p> <p>4 Notary Public in and for the Commonwealth</p> <p>5 of Virginia at Large, and whose commission</p> <p>6 expires August 31, 2011, do certify that the</p> <p>7 foregoing is a true, correct and partial</p> <p>8 transcript of the proceedings to the best</p> <p>9 of my ability.</p> <p>10</p> <p>11 I further certify that I am neither</p> <p>12 related to nor associated with any counsel</p> <p>13 or party to this proceeding, nor otherwise</p> <p>14 interested in the event thereof.</p> <p>15</p> <p>16 Given under my hand and notarial seal</p> <p>17 at Lynchburg, Virginia, this 9th day of</p> <p>18 November, 2007.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Barbara Burnette, CCR# 0315050</p> <p>24</p> <p>25</p>	