

**IN THE
SUPREME COURT OF VIRGINIA**

RECORD NO. 072326

**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
SCRIVENER, ROY CLINTON JOHNS, ANNE ADAMS
ROBERTSON MASSIE, AMANDA SANDOS AND LAURA
KATZMAN, *Petitioners,***

v.

**THE TRUSTEES OF RANDOLPH-MACON WOMAN'S COLLEGE,
D/B/A RANDOLPH-MACON WOMAN'S COLLEGE, *Respondent.***

**REPLY MEMORANDUM IN SUPPORT OF MOTION FOR
MODIFICATION OF BOND REQUIREMENTS**

From the Circuit Court of the City of Lynchburg

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INTRODUCTION

As soon as Plaintiffs learned from their bank and the bonding company that they would be required to post full collateral for their \$1 million injunction bond and it became apparent they could not raise the \$1 million in the abbreviated time due to the Thanksgiving holiday, Plaintiffs submitted a motion to modify the bond requirement.¹ In opposing Plaintiffs' motion, Defendants rely on an unreasonably narrow reading of Virginia law and allegations regarding their damages that are belied by Randolph College's own spokeswoman. For the reasons stated below and in Plaintiffs' Motion, the Court should modify the bond requirement.

A. The College's Stated Position That It Will Not Sell the Art Before Litigation is Concluded Undermines Its Claim That It Will Be Harmed if the Bond is Reduced.

In their Opposition to Petitioners' Motion to Further Reduce Injunction Bond, Defendants do not deny or disavow the statement of College spokeswoman Brenda Edson that, "[t]he college has no immediate plans to sell any of the four unrestricted paintings before the litigation is concluded." Christa Desrets, *Randolph College withdraws proceeding dealing with selling, sharing art*, News Advance, Nov. 29, 2007 (Exhibit 8 to Plaintiffs' Motion). Given this fact, it is hard to see how Defendants can complain about the relief sought by Plaintiffs. Of course, an injunction still is necessary because the "immediate plans" of the College could change. However, the College will be hard pressed to sell the Four Paintings in light of this promise. Accordingly, an injunction

¹ Thus, Defendants' assertion that Plaintiffs failed to comply with the ten days provided in Rule 5:4 is specious.

preventing the sale of the paintings during litigation is perfectly consistent with the College's publicly-stated position and therefore should be granted.²

B. Plaintiffs are Suing as Representatives of the Public Interest, as Well as Individuals with Special Interests.

Defendants claim that Plaintiffs are simply "19 disgruntled students, alumni [sic], former employees, and residents" of Lynchburg, and there is no basis to conclude that they are "'representative' of the thousands of other people being affected by" the College's actions. Reply Br. at 3. In making this claim, Defendants completely ignore the overwhelming evidence presented in Plaintiffs' Motion that their grassroots campaign to save the Four Paintings raised \$500,000 in cash in only six business days – a quarter of the amount the College was able to raise in its entire annual 2006-2007 fundraising drive. This evidence shows it is the College, not Plaintiffs, who fail to represent the interests of the students and alumnae of the College and the citizens of the City of Lynchburg in pursuing their misguided campaign to sell what may be Virginia's most important cultural treasures to mask their own financial mismanagement.

Moreover, in claiming that Plaintiffs should not receive the benefit of a lower bond because they are not suing in a representative capacity, Defendants rely on an

² The fact that the College has no plans to sell the art before the conclusion of litigation also undermines the College's claim that it will be harmed due to the injunction. There can be no harm if the College is taken at its word that there would be no sale, regardless whether an injunction is in place.

The College also cites the auction at Christie's on November 19 and 29, as evidence that it will suffer more than \$1 million in damages. In fact, at the recent auction, *one fourth of the paintings*, including one of the most valuable paintings at the auction, *Françoise in Green, Sewing*, by Mary Cassatt, failed to sell. The total sales generated at the auction thus may simply have reflected a high volume of artwork on the auction block, rather than a particularly strong market for the art. See Lee Rosenbaum, *St. Louis Art Museum's Cassat Unsold at Auction*, Artsjournal Weblog (Nov. 29, 2007) (Exhibit 1).

overly-narrow reading of *Deeds v. Gilmer*, 162 Va. 157, 174 S.E. 37 (1934) and a misreading of Virginia Code § 8.01-631, which apply to the issuance of injunction bonds. Code § 8.01-631 includes an exception for the general requirement of a bond for “a fiduciary or any other person from whom in the opinion of the court awarding an injunction it may be improper or unnecessary to require bond . . . ,” (emphasis added). Similarly, *Deeds*, 162 Va. at 271, 174 S.E. at 82, contains an exception for “a personal representative or some other person suing in a similar representative capacity.”

Defendants read these clauses as limiting the situations in which a bond is not required (or for which a lower bond is required) to only those cases involving personal representatives. Defendants then cite the definition of a personal representative and claim that Plaintiffs do not fit within that definition. In short, Defendants would have the Court ignore the broadening language in the exceptions provided in the statute. This the Court may not do. As this Court repeatedly has explained, “every part of a statute is presumed to have some effect and no part will be considered meaningless unless absolutely necessary.” *Sansom v. Board of Supervisors*, 257 Va. 589, 595, 514 S.E.2d 345, 348 (1999) (citing *Hubbard v. Henrico Ltd. Partnership*, 255 Va. 335, 340-41, 497 S.E.2d 335, 338 (1998); *Sims Wholesale Co. v. Brown-Forman Corp.*, 251 Va. 398, 405, 468 S.E.2d 905, 909 (1996); *Raven Red Ash Coal Corp. v. Absher*, 153 Va. 332, 335, 149 S.E. 541, 542 (1929)).

In this case, had the legislature wanted to limit the applicability of the exception to the general bond requirement, it could have done so by only permitting such an exception in the case of a personal representative, a term of art that the General Assembly has defined. But the legislature – and the Court in *Deeds* – did not do so. Instead, they

expressly broadened the exception to include *other persons suing in a similar representative capacity*. This is precisely the situation in which Plaintiffs stand. The Circuit Court found that student Maggie Williams has a special interest in the Four Paintings, but other students like her who study the Maier Museum's artwork in their classes are injured as well. The Circuit Court found that alumna Alice Priebe has a special interest in the Four Paintings, but other alumna who enjoy viewing the Four Paintings on return trips to the College are injured as well. The Circuit Court found that Paul Whitehead, a Lynchburg citizen and donor, was specially injured by the sale of the Four Paintings, but other donors who have given funds to support the prestigious art collection at the Maier Museum and other citizens of Lynchburg who visit the Maier Museum to view the Four Paintings are injured as well.

The Four Paintings are part of a collection given for the benefit of students, alumnae and citizens, as set forth in the letters, wills and trusts of the donors and the literature of the College, itself. The students, alumnae, donors and citizens who serve as Plaintiffs, though not technically "personal representatives," are "other persons suing in a similar representative capacity." *Deeds*, 162 Va. at 271, 174 S.E. at 82. Eliminating or decreasing the bond requirement for such representatives is consistent with Virginia law.

CONCLUSION

For the foregoing reasons and those set forth in their previous memorandum, Plaintiffs respectfully request that the Court reduce the amount of the bond required to \$500,000. In the alternative, Plaintiffs request that the Court allow them to post a \$500,000 surety with the Circuit Court, covering two paintings, *Men of the Docks*, by George Bellows, and *A Peaceable Kingdom*, by Edward Hicks, and grant them an

extension until March 31, 2008, to post an additional \$500,000 bond covering the remaining two paintings, *Through the Arroyo*, by Ernest Martin Hennings, and *Troubadour*, by Rufino Tamayo.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Rule 5:4(a) of the Rules of the Supreme Court of Virginia, I hereby certify that, on November 30, 2007, a copy of the foregoing was filed electronically with the Supreme Court of Virginia; four copies of the foregoing will be sent by hand-delivery on December 3, 2007, to the Clerk of the Supreme Court of Virginia, Supreme Court Building, 100 North Ninth Street, Richmond, Virginia 23219; and copies of the foregoing were sent via electronic mail to counsel for respondents:

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A handwritten signature in black ink, appearing to read "Steph Pegg", is written over a horizontal line.

CultureGrrl

Lee Rosenbaum's cultural commentary

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November 29, 2007

St. Louis Art Museum's Cassatt Unsold at Auction



Mary Cassatt, "Françoise in Green, Sewing"

The ghost of **Adelyn Breeskin** intervened in the St. Louis Art Museum's attempt to sell its only Cassatt, "Françoise in Green, Sewing." The painting, which Cassatt expert Breeskin had exhibited at the Baltimore Museum, failed to find a buyer today at the same Christie's auction where the **Bellows'** "Men of the Docks" and two other works from the Maier Museum of Randolph College would also have been put on the block, had opponents to those sales not gotten a court-ordered reprieve.

Even so, the auction house came away with its biggest total ever for a sale of American paintings, drawings and sculpture---\$71.3 million. And



the Rose Art Museum of Brandeis University succeeded in jettisoning its Childe Hassam for \$3.74 million, including buyer's premium.

Sotheby's American art sale the day before totaled \$65.2 million. At both houses, about a quarter of the lots failed to sell.

Posted November 29, 2007 8:37 PM