

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF LYNCHBURG

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

Plaintiff,)

v.)

Case No. _____)

SUNTRUST BANK, as Trustee of the)
Trust created under the Will of Louise)
Jordan Smith, deceased,)

and)

ROBERT F. MCDONNELL, not)
personally, but in his capacity as)
Attorney General of Virginia,)

Defendants.)

COMPLAINT

Randolph College (the "College"), f/k/a The Trustees of Randolph-Macon Woman's College, Incorporated, by counsel, files this Complaint as the sole beneficiary of the Trust created under the Will of Louise Jordan Smith, deceased, and requests an order declaring the rights of the College with respect to the Trust under the Will of Louise Jordan Smith, or in the alternative, modifying the terms of that Trust pursuant to sections 55-542.01 and 55-544.12 of the Code of Virginia. In support of its Complaint, the College states as follows.

Randolph College and the Smith Trust Act

1. Randolph College is a private institution of higher education, founded in 1891, and located in the City of Lynchburg.

2. This Complaint concerns those works of art owned by the College and purchased with funds held in trust for the benefit of the College through a bequest in the will of Louise Jordan Smith, a former College art professor (the "Smith Art").

Trust under the Will of Louise Jordan Smith

3. Louise Jordan Smith ("Ms. Smith") died a resident of the City of Lynchburg, Virginia. The will of Ms. Smith, dated December 20, 1928, was admitted to probate in the Clerk's Office of the Circuit Court of the City of Lynchburg (the "Will"). A copy of the Will is attached as Exhibit A.

4. Item IX of the Will created what is known as the "Louise Jordan Smith Trust" (the "Trust"). The Will directed the Trustee to invest the residuary of Ms. Smith's estate and, following a five-year period, use the proceeds as follows:

After the termination of the said fund as it is then composed, that is to say, the principal of the fund, together with the accrued income for the five-year period together constituting the whole corpus or principal of the fund, I devise and bequeath to Randolph-Macon Woman's College of Lynchburg, Virginia, to be used from time to time for the Art Department of said College to form a permanent collection of art; the said income shall be used for such purposes only every second year, this provision being made so as to provide enough money before any expenditure to purchase a real work of art. No purchase shall be made except with the written approval of two well recognized experts. My purpose and object in having all contemplated purchases before they are made first approved in writing by well recognized expert judges of pictures and works of art is to keep a high standard of excellence in the things that go into said collection, and to avoid any and all mistakes in the purchase, so far as possible, and I direct the said The Lynchburg Trust and Savings Bank, to rigidly insist upon this requirement.

If at any time The Lynchburg Trust and Savings Bank shall liquidate or go out of business, or shall desire to surrender this trust, then the said fund shall be turned over to the Trustees of Randolph-Macon Woman's College, and be held by them as a permanent endowment fund to be invested and reinvested from time to time as other endowment funds of said College are invested, the income therefrom to be used from time to time as above provided.

5. The Trust was modified earlier by Order of this Court entered November 29, 1957 to authorize the Trustee "to purchase works of art, approved in accordance with the will of Louise J. Smith, costing less than the biennial income from the trust fund aforesaid, and from time to time to accumulate said income for a length of time reasonably in excess of the two year period and to purchase works of art, of similar high standards of excellence, costing in excess of the biennial income aforesaid." A copy of this Order is attached as Exhibit B.

6. It is evident from the terms of the Will that Ms. Smith had a general intent to benefit the College. Ms. Smith's mechanism to benefit the College was to provide a means of educating the students through the purchase and exhibition of art. Further evidence of Ms. Smith's general intent of benefiting the College was Ms. Smith's direction that if the Trustee liquidates, goes out of business, or decides to surrender the Trust, Ms. Smith directed that the Trust assets be transferred to the College and invested as part of the College's general endowment for use according to the Trust purposes.

7. The College has used the Trust assets to purchase more than 35 works of art since the mid-1930's which are owned by the College. The College has been advised that these works of art are now worth more than \$40 million, although they were purchased at a fraction of this cost. The College has been informed that the Trust account has assets consisting of cash and marketable securities with a value of approximately \$150,000 as of July 31, 2007.

The College's Current Financial Condition

8. In December 2006, the Southern Association of Colleges and Schools ("SACS"), the accrediting body for colleges in the Southeast, placed the College on "warning" after finding that the College was spending its endowment at an unsustainable rate. Under SACS procedures, the College's financial standing will be re-evaluated in December 2007 after which SACS will

(a) release the College from the warning; (b) keep the College on warning for another year; or (c) place the College on probation. There will be negative repercussions to the College if SACS places the College on probation.

9. The College has taken several proactive measures to regain a solid financial footing. These measures include, but are not limited to, significant structural and organizational changes, staff and faculty reductions and the recent transformation of the College to a co-educational institution. These proactive measures will not solve all of the College's financial problems. The College has been advised that the College must add a substantial amount of capital to its endowment by the time of the SACS review in December 2007.

Disposition of Certain Pieces of Smith Art

10. The College is currently considering several options under which the College could generate the funds necessary to augment its endowment. Some of the options the College is considering include a partnership or joint ownership of some of the Smith Art with another charitable organization, such as a museum, or a sale of select items of the Smith Art. The options being considered by the College involve only a small number of items of the Smith Art. All of these options involve the possible transfer of an ownership interest in one or more items of the Smith Art in exchange for funds to be added to the College's endowment.

11. Although the College has been working diligently on developing options dealing with the Smith Art, the College has not decided on a final plan at this time. Once the College has a final plan, the College will submit that plan to the Court for approval. At this time, the College is unsure whether its final plan will be consistent with the terms of the Trust or require a modification.

12. Upon tendering the final plan to the Court for its consideration, the College will seek an order declaring its rights with respect to the Trust and the Smith Art pursuant to section 55-542.01 of the Code of Virginia. Specifically, the College will seek an order declaring that the College may share ownership or sell certain items of Smith Art, consistent with the terms of the Trust. Alternatively, the College will seek an order modifying the Trust pursuant to section 55-544.12(A) of the Code of Virginia on the grounds that due to circumstances not anticipated by Ms. Smith when Ms. Smith signed the Will in 1928 – namely the financial problems facing the College in 2007, the warning placed on the College by SACS, and the significant increase in the monetary value of the Smith Art in recent years – modification of the Trust will further the purposes of the Trust. Ms. Smith’s general or primary purpose was to benefit the College, and her specific purpose was to help educate College students with art. If the College were unable to bolster its endowment, putting its accreditation at risk, there will be negative repercussions to the College.

13. The parties to this Complaint are all of the necessary parties to this cause and represent all of the persons with an interest in the subject matter of this cause.

WHEREFORE, Randolph College respectfully requests that the Court:

- a. Enter an order declaring that the College has the authority consistent with the terms of the Trust to share ownership or sell certain items of the Smith Art for the purpose of augmenting its endowment and avoiding negative repercussions to the College; or
- b. Alternatively, enter an order modifying the terms of the Trust to allow the College to take these same steps for the same purpose; and
- c. Award such other relief as equity so requires.

Respectfully submitted,

RANDOLPH COLLEGE

By: Dennis I. Belcher *by JMB/TK
by permission*

Richard Cullen (VSB# 16765)
Dennis I. Belcher (VSB# 15626)
Brian E. Pumphrey (VSB# 47312)
McGuireWoods LLP
One James Center
901 East Cary Street
Richmond, Virginia 23219
804.775.1000 (phone)
804.775.1061 (fax)

Bernard C. Baldwin III (VSB# 07497)
John M. Perry, Jr. (VSB # 43608)
Edmunds & Williams, P.C.
828 Main Street, 19th Floor
Lynchburg, Virginia 24504
434.846.9000 (phone)
434.846.0337 (fax)

Counsel for Randolph College

FILED IN THE CLERK'S OFFICE OF THE CIRCUIT
COURT OF THE CITY OF LYNCHBURG
DATE 8/21/07 TIME 1057 M.
TESTE: LARRY B. PALMER, CLERK
BY: 1500 Dep. Clerk

I, LOUISE J. SMITH, of Lynchburg, Virginia, do make this my last will and testament, hereby revoking all wills and codicils heretofore made by me.

ITEM I - I direct that all my funeral expenses and just debts, with the exception of the debt secured upon the farm owned jointly by my sister and myself, be paid as soon as practicable after my death, and to that end I charge my entire estate.

ITEM II - I direct that I be buried in the cemetery lot in Warrinton, Virginia, owned by my sister and myself, and I devise the sum of \$100.00 to be held by my Executor hereinafter named, in perpetual trust, and invested and re-invested from time to time, the income therefrom to be paid over for the care of said lot to the proper authorities of said cemetery, and in case the said cemetery should at any time hereafter have or establish an association or trust fund for the perpetual care of the said cemetery, then my said Executor is authorized to turn said fund over to such association or trust fund, if my said Executor should at any time deem it wise.

ITEM III - I devise and bequeath to the Randolph Macon Woman's College, of Lynchburg, Virginia, my collection of antiques, including all old silver, glass and pottery, textiles, etc., and any antique furniture and the mirror in my little studio from which my own portrait was painted; my own portrait, and not in excess of twenty other pictures, which shall be selected by the College out of my own canvases; and all canvases by other artists in my possession, and my books of art for the College Library. I desire these antiques and pictures to be kept together as a unit and held as an art exhibit, and to be always open for inspection by the people of Lynchburg. The pictures in this clause given to the College

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are to be selected out of my own canvasses before any of the other selections hereinafter provided for are made, with the exception of the portrait which I give to my brother.

ITEM IV - I devise and bequeath to my brother, T. E. Smith, the portrait which I painted of my father, and one portrait which I painted of my mother, and all of the stock which I own in the Pioche Mine or Mining Company of Nevada.

ITEM V - I devise and bequeath to Mrs. Moselle Hughes, of Flint Hill, Virginia, my interest in the sewing machine located in my old home at Flint Hill and two pieces of furniture in said home, the said two pieces of furniture to be selected by my sister, May E. Smith.

ITEM VI - I devise and bequeath to my sister, May E. Smith, any three of my own pictures which she may desire, now in my home or in my little studio, after the selection has been made by Randolph-Macon Woman's College as above provided, she to select said pictures. I also give to my said sister all of my jewelry, my two very large family tablespoons and any and all interest whatever it may be, which I may have in two lots in Charles Town, West Virginia, and in one lot in Bennington, a suburb of Washington, D. C., which belonged to my father T. T. Smith, and all my clothing, personal effects and furniture at the home place near Flint Hill, Virginia, not herein otherwise disposed of.

ITEM VII - I own jointly with my sister, May E. Smith, the old home place at Flint Hill, Virginia, and the farm thereto attached, containing 217 acres, more or less, upon which there is outstanding a deed of trust executed jointly by my sister and myself. I devise and bequeath to my said sister, May E. Smith, all my interest in and to the said home place and farm at Flint Hill, Virginia, subject to the deed of

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trust outstanding against the same, which she shall assume, and subject to the following charges:

I devise and bequeath to Hollins College, of Hollins, Virginia, the sum of Five Hundred (\$500.00) Dollars in memory of my mother, Mary Anna Miller, an alumna of said college, to be used for the benefit of the art department of said college preferably in the purchase of a picture for the permanent art collection. I make this devise and bequest as a charge upon my interest in the farm at Flint Hill, above devised to my said sister, which devise to her of the said farm shall take effect in fee simple only when she shall have paid to Hollins College the said sum of \$500.00 for the purposes above set forth.

ITEM VIII - I make the following specific devises and bequests:

To my cousin, Eleanor Pendleton, wife of Dr. William G. Pendleton, the sum of One Thousand (\$1,000.00) Dollars.

To her daughter, Frances Pendleton, my linen chest.

To Ernest Tolbert, of Flint Hill, Virginia, the sum of One Hundred (\$100.00) Dollars, in consideration of his long and faithful services to my family.

To my friend, Mrs. A. B. Thomas, (nee Gertrude Auld) now of 842 Mirifield Road, Los Angeles, California, the sum of Two Thousand (\$2,000.00) Dollars; and two of my pictures to be selected by her or someone whom she may designate.

To my friend, Mrs. E. B. Crockett, now of 53 Irvin Place, New York City, two of my pictures in my small studio, to be selected by her, or someone whom she may designate.

To my friends, Mrs. R. M. Woodson and Felix Geissler, of Lynchburg, and Mrs. Hannah D. Blackwell, of Roanoke, and of my pictures, to be selected by them. (The above was witnessed before me as executor.)
Lillian J. Smith

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To my friend, Mrs. Walter Rogers, now of 2541
Post Office Street, Jacksonville, Florida, two of my pictures to
be selected by her or someone whom she may designate.

To my friend, Mrs. W. J. D. Bell, of Lynchburg,
Virginia, one of my pictures to be selected by her.

Any of my friends on the Faculty of the Randolph-
Macon Woman's College, who have been associated with me there,
shall each be permitted, if they so desire, to select and take
one of my canvasses or sketches after those devised to friends
and to the College as above provided have been selected.

My remaining pictures shall remain in the residuum
of my estate.

I give to my cousin, Eleanor Pendleton, of Lynch-
burg, Virginia, all my clothing, personal effects, books, fur-
niture, silver, etc., (not including, however, any antiques
given to Randolph-Macon Woman's College), located at Lynchburg,
Virginia, whether at Randolph-Macon Woman's College or else-
where. Such items are taken out of the residuum of my estate.

If any of the parties above named in this item
of my will should pre-decease me, then the bequest to the one
so dying shall revert into the residuum of my estate.

ITEM IX - I devise and bequeath all the residue
of my estate, real, personal or mixed, wherever situated, in-
cluding any of my pictures not heretofore disposed of, to The
Lynchburg Trust and Savings Bank, of Lynchburg, Virginia, my
Executor hereinafter named, to be held by it upon the following
trust:

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It is directed to convert all of said estate into cash as soon as possible after my death, without sacrificing the estate, and it shall invest the proceeds of said estate in such securities as it may deem wise, having regard both to the safety of the corpus or principal and the rate of income therefrom. For a term of five years from the date of my death, the income received by my said Executor from said fund shall be invested and re-invested as and for a part of the corpus of said trust fund. After the termination of the said five-year period above provided for, the income from said fund as it is then composed, that is to say, the principal of the fund, together with the accrued income for the five-year period together constituting the whole corpus or principal of the fund, I devise and bequeath to Randolph-Macon Woman's College of Lynchburg, Virginia, to be used from time to time for the Art Department of said College to form a permanent collection of art; the said income shall be used for such purposes only every second year, this provision being made so as to provide enough money before any expenditure to purchase a real work of art. No purchase shall be made except with the written approval of two well recognized experts. My purpose and object in having all contemplated purchases before they are made first approved in writing by well recognized expert judges of pictures and works of art is to keep a high standard of excellence in the things that go into said collection, and to avoid any and all mistakes in the purchase, so far as possible, and I direct the said The Lynchburg Trust and Savings Bank, to rigidly insist upon this requirement.

If at any time The Lynchburg Trust and Savings Bank shall liquidate or go out of business, or shall desire to

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surrender this trust, then the said fund shall be turned over to the Trustees of Randolph-Macon Woman's College, and be held by them as a permanent endowment fund to be invested and re-invested from time to time as other endowment funds of said College are invested, the income therefrom to be used from time to time as above provided.

ITEM X - My said Executor hereinafter named is authorized and empowered to sell, transfer and convey, upon such terms and at such prices as it may deem best, any and all portions of my estate, real, personal or mixed, for the purposes of settling my estate and the distribution of the same as hereinbefore provided, with authority to institute any suit necessary for the partition of the property in which I may own an interest, or for the sale of the same for partition.

ITEM XI - I hereby nominate, constitute and appoint The Lynchburg Trust and Savings Bank of Lynchburg, Virginia, the Executor of this my last will and testament, and request that it be permitted to qualify as such without security

WITNESS my signature and seal this 26th day of December, 1928.

Louise J. Smith (SEAL)

We, the undersigned, do hereby certify that Louise J. Smith executed the foregoing instrument in our presence and acknowledged the same to be her last will and testament, and we, at her request, in her presence, and in the presence of each other all three being present together with her, hereto affix our signatures as witnesses hereof. We further certify that the said Louise J. Smith is of sound mind.

Wm. J. Lanning
Richard G. Lanning
J. L. Lanning

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LYNCHBURG, VA.

Virginia: At Lynchburg Corporation Court, January 10th, 1929.

A paper writing, bearing date on the 20th day of December, 1928, purporting to be the last will and testament of Louise J. Smith, deceased, was produced to the court and proved according to law by the oaths of T. G. Hobbs, Mary F. Cowling and Ruby Upton, the subscribing witnesses thereto, and thereupon the said paper writing was ordered to be recorded as the true last will and testament of the said Louise J. Smith, deceased.

On motion of the Lynchburg Trust and Savings Bank, which by its proper officers, made oath as the law directs, and entered into and acknowledged a bond in the penalty of \$50,000.00, conditioned according to law, without surety as in said will requested, &c, certificate was granted the said Lynchburg Trust and Savings Bank for obtaining a probate of said will in due form. And the said bond was ordered to be recorded.

Ordered that John Victor, W. D. Morgan, Miss Frances Rhodes, A. M. White and R. M. Woodson, or any three of them, after being duly sworn for the purpose, do well and truly appraise the estate whereof Louise J. Smith died seized and possessed, which may be produced or shown to them, and return an inventory thereof, according to law.

Teste: Hubert H. Martin,
Clerk.

0 transfer fee.

Petitioner

Respondent

the First National Bank, Trustee u/w of Louise J. Smith, deceased, and the answer of the respondent, Randolph-Macon Woman's College, were filed in the Clerk's Office of this Court, upon the deposition of Harriet Fitzgerald and Mary J. Williams, duly taken pursuant to notice and likewise filed in said Clerk's Office and upon the certified copy of the will of Louise J. Smith, this day filed by leave of Court, and by counsel of parties by counsel, and was argued by counsel.

And it appearing to the Court that the petitioner trustee has, since the death of Louise J. Smith in 1928, set up the trust fund contemplated by the will of her will and from time to time has authorized the expenditure of the income arising therefrom for the purchase every second year of books approved by the expert judges, as prescribed.

That due to the conditions that could not have been foreseen it was impossible for the Trustee to purchase books contemplated by the will aforesaid, and thus to carry out the intent and purpose of the Testatrix in providing a permanent fund for the respondent college; and

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...with the terms of said trust, for the expen-
...for two years for the purchase of one work
...larger or smaller amount or to
...or shorter periods than contem-
...the accomplishment of the purpose
...for the respondent college to acqui-
...the Testatrix and that to accomplish
...authorized to approve the purchase
...the amount of biennial income or a
...and at intervals varying from th
...two-year period provided in the will;

The Court doth ADJUDGE, ORDER and DECREE that in order to
effectuate the plan and purpose of the Testatrix and to make it possi-
ble to acquire works of art of the high standard of excellence pre-
scribed by the trust aforesaid the TRUSTEE BE AND IT IS HEREBY AUTHOR-
IZED to purchase works of art approved in accordance with the will of
Louise L. ... starting less than the biennial income from the trust
fund aforesaid and from time to time to accumulate said income for a
length of time in excess of the two year period and to
purchase works of art of similar high standards of excellence, costing
in excess of the biennial income aforesaid.

And the objects of this proceeding having been accomplished
...taken from the docket.
...Clerk.
Herbert H. Martin

Attorney for Randolph-Macon
Woman's College