

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF LYNCHBURG

JENNA DODGE, et al.,

Plaintiffs,

v.

RANDOLPH COLLEGE,

Defendant.

)
)
)
)
)
)
)
)
)
)
)

Case No. CL07-1917

**DEFENDANT’S ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFFS’ AMENDED COMPLAINT**

Defendant Randolph College (the “College”), by counsel, states as follows for its Answer and Affirmative Defenses to Plaintiffs’ Amended Complaint.

Introduction

This is a case about Four Paintings, and whether their owner, the College, has the right to sell them. This is not a case about 3,400 other pieces of art, or the Louise Jordan Smith Trust, or whether the College had the right to “go co-ed,” or why the College might want to sell the Four Paintings, or its past management decisions, or its accreditation by the Southern Association of Colleges and Schools, or personnel issues, or finances, or student recruitment, or athletics or any of the other irrelevant issues displayed in Plaintiffs’ Amended Complaint and their outrageously overbroad discovery.

Plaintiffs are students, former students, former employees, donors and local citizens who disagree with certain decisions made by the Board of Trustees of the College. Though Plaintiffs have the right to disagree with decisions made by the Board and to express those opinions publicly, and though the Board is willing to receive constructive input on relevant matters, none of these Plaintiffs has been elected to the Board. None has been tasked with the responsibility to

make decisions on behalf of the College. None has been entrusted with any duties in accordance with the Code of Virginia.

At a hearing on November 8, 2007, the Court gave Plaintiffs leave to amend their original Complaint in certain specific ways. Plaintiffs have taken broad liberties with that ruling and gone far beyond the permission given by the Court. They have added theories and factual allegations that do not belong in this case, raised non-justiciable issues already dismissed by the Court, recycled theories on which they have already lost, sought relief they were earlier denied, relied on so-called "evidence" they have authored or provoked themselves and/or that amounts to triple hearsay, made up stories they cannot back up with facts or evidence, relied on causes of action that do not exist, and sought to litigate the "co-ed" issues under the guise of opposing the sale of the Four Paintings.

Subject to, without waiving, and incorporating by reference its Motion to Strike the Amended Complaint, its Demurrer to the Amended Complaint, and its Motion for Protective Order, filed simultaneously herewith, the College responds as follows to this most inappropriate Amended Complaint:

Answer

The introductory paragraph and headings to the Amended Complaint require no response. In response to the numbered paragraphs of the Amended Complaint:

1. As to the first sentence, admits. As to the second and third sentences, admits in part except states that the College has admitted males for many years prior to 2007. As to the fourth sentence, admits.
2. As to the first sentence, admits. As to the second sentence, admits on information and belief.

3. As to the first sentence, admits. As to the second sentence, admits on information and belief.

4. As to the first sentence, admits. As to the second sentence, denies except lacks sufficient information to admit or deny why Ms. Maxwell transferred to another college, and therefore denies the same. As to the third sentence, admits on information and belief. As to the fourth sentence, lacks sufficient information to admit or deny and therefore denies.

5. As to the first sentence, admits. As to the second sentence, admits on information and belief.

6. As to the first sentence, admits. As to the second sentence, admits on information and belief.

7. As to the first sentence, admits. As to the second sentence, admits on information and belief.

8. As to the first sentence, admits. As to the second sentence, denies except admits that Ms. Priebe has donated money to the College. As to the third sentence, admits on information and belief.

9. As to the first sentence, denies. As to the second sentence, admits on information and belief. As to the third sentence, lacks sufficient information to admit or deny and therefore denies. As to the fourth and fifth sentences, the document attached as Exhibit 1 speaks for itself.

10. As to the first sentence, denies. As to the second sentence, lacks sufficient information to admit or deny and therefore denies. As to the third sentence, admits on information and belief.

11. As to the first sentence, admits. As to the second sentence, admits on information and belief.

12. As to the first sentence, admits. As to the second sentence, admits on information and belief.

13. As to the first sentence, denies except admits that Ms. Agnew is a former employee of the College and worked for the College in various capacities for more than twenty years. As to the second sentence, admits on information and belief.

14. As to the first sentence, denies except admits that Judge Whitehead is a donor to the College. As to the second sentence, admits on information and belief. As to the third sentence, admits.

15. As to the first sentence, denies except admits that Mrs. Whitehead is a donor to the College. As to the second sentence, admits on information and belief. As to the third sentence, admits.

16. As to the first sentence, lacks sufficient information to admit or deny, and therefore denies. As to the second sentence, admits on information and belief.

17. As to the first sentence, denies except admits that Mr. Johns has donated artwork to the College. As to the second sentence, admits on information and belief.

18. As to the first sentence, denies except admits that Ms. Massie is a well-known artist, a citizen of Lynchburg, an alumna of the College and a member of the Maier Museum Advisory Board. As to the second sentence, denies except admits that Ms. Massie has donated money and artwork to the College. As to the third sentence, admits on information and belief.

19. As to the first sentence, admits. As to the second sentence, lacks sufficient information to admit or deny and therefore denies. As to the third sentence, admits on information and belief.

20. As to the first sentence, admits. As to the second sentence, denies. As to the third sentence, admits on information and belief.

21. Admits.

22. Admits.

23. States a legal conclusion and therefore requires no response. To the extent a response is required, denies.

24. Admits that the art has been important to the College but denies that the art has been housed at the Maier Museum for almost one hundred years and that the Maier Museum has existed for almost one hundred years.

25. As to the first sentence, admits except denies that the College's art is an asset "for" the citizens of Lynchburg. As to the second sentence, admits that works of art owned by the College have been displayed at the College, denies that the College's art has been consistently displayed or open to the public in any particular location, and denies the existence of a "permanent Maier Museum Collection." As to the third sentence, admits.

26. As to the first sentence, denies except admits that on October 1, 2007, the College's Board voted to sell *Men of the Docks* by George Bellows. As to the second and third sentences, admits. As to the fourth sentence, the document attached as Exhibit 6 speaks for itself.

27. As to the first sentence, admits that the removal commenced at approximately 4:45 p.m., admits that the police limited public access to the road by the Museum but denies that the police "barricaded" the road, admits, on information and belief, that a police officer (without knowledge of, or any express or implied authorization from, any College personnel or representatives) falsely told passers-by that there was a bomb threat, denies that all computer

access to the Museum was cut off, admits that telephone access to the Museum was interrupted, but denies that internet access to the Museum was cut off to anyone who was logged on to their computer at the time the Four Paintings were being removed, admits that a moving van backed up to the Museum, and admits that the Four Paintings were removed from the Museum and transported away for auction. As to the second sentence, admits. Responding further, the College states that the removal and transport of the Four Paintings was supervised and directed by qualified museum industry professionals and that appropriate security measures were observed.

28. As to the first sentence, admits. As to the second sentence, the documents attached as Exhibit 7 speak for themselves. As to the third sentence, denies except admits that certain people and entities have criticized the proposed sale of the Four Paintings and the method by which they were removed. As to the fourth sentence, the documents attached as Exhibits 7 and 8 speak for themselves.

29. As to the first sentence, denies. As to the second sentence, admits. As to the third sentence, the document attached as Exhibit 9 speaks for itself.

30. As to the first sentence, admits that President Klein stated that the College had, at the time, a \$153 million endowment, and states that the document attached as Exhibit 10 speaks for itself. As to the second and third sentences, the College is without direct knowledge regarding the endowments of other institutions and therefore denies. As to the fourth sentence, the document attached as Exhibit 11 speaks for itself. As to the fifth sentence, denies the existence of a "Maier Museum Collection" and otherwise is without sufficient information to admit or deny and therefore denies.

31. As to the first sentence, denies except admits that the Four Paintings are important pieces of art owned by the College. As to the second sentence, denies except admits that each of the Four Paintings has been owned by the College for some time.

32. As to the first sentence, admits. As to the second sentence, the documents attached as Exhibits 12 and 13 speak for themselves. As to the third sentence, lacks sufficient information to admit or deny and therefore denies. As to the fourth sentence, the document attached as Exhibit 14 speaks for itself. As to the fifth sentence, denies except states that the document attached as Exhibit 14 speaks for itself. As to the sixth, seventh and eighth sentences, lacks sufficient information to admit or deny and therefore denies, and states that the document attached as Exhibit 15 speaks for itself. As to the ninth and final sentence, denies.

33. As to the first sentence, admits on information and belief. As to the second sentence, the document attached as Exhibit 16 speaks for itself. As to the third and fourth sentences, lacks sufficient information to admit or deny and therefore denies. As to the fifth, sixth and seventh sentences, denies except states that the document attached as Exhibit 17 speaks for itself.

34. As to the first sentence, admits. As to the second sentence, the documents attached as Exhibits 18 and 19 speak for themselves. As to the third sentence, lacks sufficient information to admit or deny and therefore denies. As to the fourth sentence, denies except states that the document attached as Exhibit 19 speaks for itself. Responding further, the College states that the College received *A Peaceable Kingdom* in 1980 pursuant to an unrestricted bequest in Ms. Crawford's will.

35. As to the first sentence, admits. As to the second sentence, the document attached Exhibit 20 speaks for itself. As to the third sentence, lacks sufficient information to admit or

deny and therefore denies. As to the fourth and fifth sentences, the documents attached as Exhibits 21 and 22 speak for themselves. As to the sixth sentence, denies. As to the seventh sentence, admits.

36. Denies except admits that the removal of the Four Paintings and the College's decision to sell them has resulted in criticism by several museum associations.

37. Lacks sufficient information to admit or deny and therefore denies, and states that the document attached as Exhibit 22 speaks for itself.

38. Lacks sufficient information to admit or deny and therefore denies, and states that the document attached as Exhibit 23 speaks for itself.

39. Lacks sufficient information to admit or deny and therefore denies, and states that the document attached as Exhibit 24 speaks for itself.

40. Lacks sufficient information to admit or deny and therefore denies, and states that the document attached as Exhibit 25 speaks for itself.

41. Lacks sufficient information to admit or deny and therefore denies, and states that the document attached as Exhibit 26 speaks for itself.

42. As to the first sentence, denies except admits that the proposed sale has been criticized by museum associations. As to the second sentence, the document attached as Exhibit 27 speaks for itself.

43. As to the first and second sentences, denies. As to the third sentence, the document attached as Exhibit 1 speaks for itself.

44. As to the first sentence, admits except denies that the College sought permission to sell a "permanent collection of art" and denies that Ms. Smith bequeathed a "permanent

collection of art" to the College. As to the second sentence, admits. As to the third sentence, the document attached as Exhibit 28 speaks for itself.

45. Admits except lacks sufficient information to admit or deny whether Ms. Elliott and Ms. Monahan are heirs of Ms. Smith, and therefore denies the same. States that the document attached as Exhibit 29 speaks for itself.

46. Denied except states that the document attached as Exhibit 29 speaks for itself. States that Plaintiffs have apparently miscited to Exhibit 28.

47. Denies except states that the document attached as Exhibit 29 speaks for itself. States that Plaintiffs have apparently miscited to Exhibit E of something.

48. Admits.

49. Denies. The transcript of the November 8, 2007 hearing speaks for itself.

50. As to the first sentence, admits that the College filed a Motion to Nonsuit and that the Court granted the Motion. As to the second sentence, denies because the College has made it clear that it will not sell any Smith Art without first seeking permission of the Court, and states that the College has no present intention to sell any Smith Art.

51. Denies because the College has no present intention to sell any Smith Art and will not sell any Smith Art without first seeking permission of the Court.

52. Denies.

53. As to the first and second sentences, denies. As to the third sentence, the document attached as Exhibit 31, which was written by Plaintiff Katzman, speaks for itself.

54. Denies.

55. As to the first sentence, admits that some students at the College use some of the art in their courses. As to the second and third sentences, denies except states that the transcript of the November 8, 2007 hearing speaks for itself.

56. As to the first sentence, admits the existence of the Calvert Writing Contest in which current students respond to or interpret works of art. As to the second sentence, denies. The transcript of the November 8, 2007 hearing speaks for itself.

57. Denies except states that the transcript of the November 8, 2007 hearing speaks for itself.

58. Denies.

59. As to the first sentence, admits. As to the remaining sentences, the document attached as Exhibit 2 speaks for itself.

60. States that the document attached as Exhibit 2 speaks for itself.

61. As to the first sentence, the document attached as Exhibit 2 speaks for itself. As to the second sentence, denies except admits that the College intends to sell the Four Paintings and that each of the Four Paintings previously hung in the Maier Museum.

62. Admits except denies that the factual allegations in that Complaint must be taken as true for any purpose other than the College's Demurrer, and states that the pleadings and the orders in the Breach of Contract Case speak for themselves.

63. Denies except states that the document attached as Exhibit 2 speaks for itself.

64. Denies except states that the document attached as Exhibit 32 speaks for itself.

65. Denies except admits that the College intends to sell the Four Paintings and that each of the Four Paintings previously hung in the Maier Museum.

66. As to the first sentence, admits. As to the remaining sentences, the document attached as Exhibit 4 speaks for itself.

67. Denies except states that the document attached as Exhibit 4 speaks for itself.

68. Denies except states that the document attached as Exhibit 4 speaks for itself.

69. Denies except states that the document attached as Exhibit 4 speaks for itself.

70. Admits except denies that the factual allegations in that Complaint must be taken as true for any purpose other than the College's Demurrer, and states that the pleadings and the orders in the Charitable Trust Case speak for themselves.

71. Denies.

72. Denies except admits that the College plans to sell the Four Paintings.

73. No response is required.

74. Denies.

75. Denies.

76. Denies.

77. Denies.

78. Denies.

79. No response is required.

80. States that the Code of Virginia speaks for itself.

81. Denies.

82. Denies.

83. Denies.

84. Denies that Plaintiffs have completely and accurately cited the College's Articles of Incorporation. Admits that until September 19, 2006, the College's Articles of Incorporation stated one of its purposes to be:

To conduct, maintain and operate a college, or university, or institution, under the name of Randolph-Macon Woman's College, for the higher education and culture, primarily of women, and for their instruction and training in the liberal arts, languages, literature, sciences and other branches of learning usually taught in institutions of like character; and service and conduct, under positive religious influences but without imposing or requiring any sectarian or denominational test for membership in the student body, or faculty, or in the award of honors or degrees.

85. Denies except states that the College's Academic Catalog speaks for itself.

86. Denies except states that the College's Academic Catalog speaks for itself.

87. Denies except admits the College intends to sell the Four Paintings and that each of the Four Paintings previously hung in the Maier Museum.

88. Denies.

89. Denies.

90. Denies.

91. No response is required.

92. Admits that the College is a charitable corporation and states that the Code of Virginia speaks for itself.

93. Denies.

94. Denies.

95. Denies that Plaintiffs have completely and accurately cited the College's Articles of Incorporation. Admits that until September 19, 2006, the College's Articles of Incorporation stated one of its purposes to be:

To conduct, maintain and operate a college, or university, or institution, under the name of Randolph-Macon Woman's College, for the higher education and culture, primarily of women, and for their instruction and training in the liberal arts, languages, literature, sciences and other branches of learning usually taught in institutions of like character; and service and conduct, under positive religious influences but without imposing or requiring any sectarian or denominational test for membership in the student body, or faculty, or in the award of honors or degrees.

96. Denies except states that the College's Academic Catalog speaks for itself.
97. Denies except states that the College's Academic Catalog speaks for itself.
98. Denies except admits the College intends to sell the Four Paintings and that each of the Four Paintings previously hung in the Maier Museum.
99. Denies.
100. Denies.
101. Denies.
102. No response is required.
103. Denies.
104. Denies.
105. Denies.
106. Denies.
107. Denies.
108. No response is required.
109. The Code of Virginia speaks for itself.
110. The Code of Virginia speaks for itself.
111. The Code of Virginia speaks for itself.
112. Denies.

113. Denies
114. Denies.
115. Denies.
116. No response is required.
117. The Code of Virginia speaks for itself.
118. Denies.
119. Denies.
120. Denies.
121. Denies.
122. Denies
123. No response is required.
124. Denies.
125. Denies.
126. Lacks sufficient information to admit or deny what Plaintiffs anticipate, and therefore denies the same.
127. As to the first sentence, denies. As to the second sentence, Exhibit 9 speaks for itself.
128. As to the first sentence, denies except admits that President Klein stated that the College had, at that time, a \$153 million endowment, and states that the document attached as Exhibit 10 speaks for itself. As to the second sentence, denies the existence of a "Maier Museum Collection" and otherwise is without sufficient information to admit or deny and therefore denies.
129. The document attached as Exhibit 34 speaks for itself.

130. Denies except admits that if the College sells a piece of art, it is more likely than not that it will not be recovered.

131. States a legal conclusion to which no response is required. To the extent a response is required, denies.

132. As to the first sentence, denies. As to the second sentence, admits. As to the third sentence, denies.

133. Denies except lacks sufficient information to admit or deny why the student plaintiffs chose to attend the College, and therefore denies the same.

134. Denies.

135. Denies.

136. Denies.

137. Denies.

138. Denies.

139. Denies.

140. Denies.

141. States that Plaintiffs are not entitled to this relief.

142. States that Plaintiffs are not entitled to this relief.

143. States that Plaintiffs are not entitled to this relief.

144. States that Plaintiffs are not entitled to this relief.

145. The College denies every allegation that is not specifically admitted.

146. To the extent the College has stated herein that certain exhibits appended to Plaintiffs' Amended Complaint speak for themselves, the College in no way admits that those documents are authentic, relevant or otherwise admissible at any trial of this matter.

Affirmative Defenses

By denominating any matter as an affirmative defense, the College does not intend to assume any burden of proof which in law or equity is properly borne by Plaintiffs. The College states the following affirmative defenses:

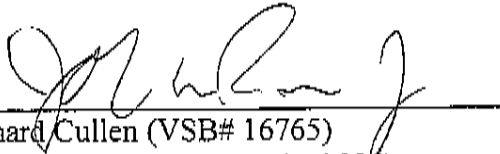
1. The College incorporates by reference its Demurrers to the initial Complaint and the Amended Complaint, including without limitation, all memoranda in support and all arguments made in open court concerning the same.
2. Plaintiffs lack standing to question the College's decision to sell the Four Paintings, or any other art owned by the College.
3. The Amended Complaint fails to state facts upon which the relief demanded can be granted.
4. The Amended Complaint is barred by the doctrine of unclean hands.
5. The Amended Complaint is barred by the doctrine of laches.
6. The College reserves the right to rely upon such additional affirmative defenses as may be disclosed by the processes of investigation and discovery.

WHEREFORE, the College respectfully requests that the Court dismiss the Amended Complaint with prejudice and award the College such additional relief as may be appropriate.

Respectfully submitted,

RANDOLPH COLLEGE

By Counsel



Richard Cullen (VSB# 16765)

Gilbert E. Schill, Jr. (VSB# 12095)

Brian E. Pumphrey (VSB# 47312)

Erin M. Sine (VSB # 71457)

McGuireWoods LLP

901 East Cary Street

Richmond, Virginia 23219

804.775.1000 (telephone)

804.775.1061 (facsimile)

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 (telephone)

434.846.0337 (facsimile)

Counsel for Randolph College

CERTIFICATE OF SERVICE

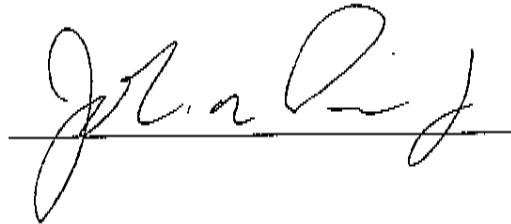
I certify that on January Y^L, 2008, a true and accurate copy of the foregoing was

delivered by facsimile and by first-class mail to:

Anthony F. Troy
William H. Hurd
Melissa J. Roberts
Troutman Sanders LLP
1001 Haxall Point
Richmond, Virginia 23218-1122

Theodore J. Craddock
Caskie & Frost
2306 Atherholt Road
Lynchburg, Virginia 24505

Counsel for Plaintiffs

A handwritten signature in cursive script, appearing to read "J. Craddock", is written over a horizontal line.