

**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. )**

**CL07001745-00**

**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, )**

**Defendant. )**

**ANSWER**

Petitioners 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 (hereafter collectively referred to as “Petitioners”) state as follows for their Answer to the Complaint of Plaintiff Randolph College f/k/a The Trustees of Randolph-Macon Woman’s College, Incorporated:

In answer to the first paragraph of the Complaint, which is not numbered, Petitioners deny that Plaintiff is entitled to the relief requested pursuant to either cited section of the Virginia Code.

1. Petitioners admit that Randolph College f/k/a the Trustees of Randolph-Macon Woman's College, Incorporated ("Randolph College" or the "College") is a private institution of higher education. Petitioners deny that the College was founded in 1891 in the City of Lynchburg. Petitioners admit that Randolph-Macon Woman's College was founded in 1891 in the City of Lynchburg. Petitioners deny any remaining allegations in paragraph 1 of the Complaint.

2. In answer to the allegations in paragraph 2 of the Complaint, Petitioners state that Plaintiff's Complaint speaks for itself. Petitioners admit that the works of art that appear to be the subject of the Complaint were purchased with funds held in a trust established by Louise Jordan Smith in her Will for the benefit of the Art Department of Randolph-Macon Woman's College. Petitioners admit that Louise Jordan Smith was a former art professor at Randolph-Macon Woman's College. Petitioners deny the remaining allegations in paragraph 2 of the Complaint.

3. Petitioners admit that Exhibit A to the Complaint appears to be a copy of the Will of Louise Jordan Smith (the "Will") executed by her on December 20, 1928. Petitioners admit the remaining allegations in paragraph 3 of the Complaint.

4. In answer to the allegations in paragraph 4 of Complaint, Petitioners aver that Louise Jordan Smith's Will speaks for itself, state that Plaintiff has misquoted the first sentence of the first quoted paragraph of the Will, and deny any allegations in paragraph 4 that vary from the express terms of the Will.

5. Petitioners admit that Exhibit B appears to be a copy of an Order of this Court entered November 29, 1957. Petitioners aver that Exhibit B speaks for itself and deny any allegations in paragraph 5 of the Complaint that vary from the express terms of Exhibit B. By

way of further answer, Petitioners state that Exhibit B is further informed by two depositions that the Plaintiff did not bring to this Court's attention and which were made part of the record in the 1957 proceeding. Those depositions are attached to the Memorandum in Support of Motion for Leave to Intervene as Exhibit J.

6. In answer to the allegations in paragraph 6 of the Complaint, Petitioners aver that the Will speaks for itself and deny any allegations in paragraph 6 of the Complaint that vary from the express terms of the Will. Petitioners specifically aver that Plaintiff has improperly characterized Miss Smith's intent in the Will. Petitioners refer Plaintiff to the Memorandum in Support of Motion For Leave to Intervene filed herein. Petitioners deny the remaining allegations in paragraph 6 of the Complaint.

7. Petitioners lack sufficient information to admit or deny the allegations in paragraph 7 of the Complaint and therefore deny these allegations as stated by Plaintiff.

8. In answer to the allegations in paragraph 8 of the Complaint, Petitioners admit that in December 2006, the Southern Association of Colleges and Schools ("SACS") placed the College on warning, but not for the reason cited by Plaintiff. Rather, in placing the College on warning, SACS pointed to the College's operating deficit, deferred maintenance, and high tuition-discount rate as areas of concern. Petitioners admit, upon information and belief, that SACS will re-evaluate the College's financial standing in December 2007. Petitioners lack sufficient information to admit or deny the remaining allegations in paragraph 8 of the Complaint, and therefore deny these allegations.

9. Petitioners deny the allegations in paragraph 9 to the extent that they characterize the measures taken by Randolph College as "proactive" and intended to help the College "regain a solid financial footing." Petitioners admit that the measures taken by

Randolph College will not solve all of its financial problems. Petitioners aver that, rather than solve its financial problems, the measures taken by Plaintiff, including specifically the College's recent change to co-education, actually have worsened the College's financial condition.

Petitioners deny the remaining allegations in paragraph 9 of the Complaint as stated by Plaintiff.

10. Petitioners lack sufficient information to admit or deny the allegations in paragraph 10 of the Complaint and therefore deny these allegations. Petitioners aver that the sale of the Smith Art, in whole or in part, and any sale of the valuable works of art in the Maier Museum are not viable, proper or effective options for the College to generate funds. Any such sale would violate the terms of the Trust established in the Will of Louise Jordan Smith. Petitioners further aver that any such sale would have a detrimental effect on the Maier Museum and the College.

11. In answer to the allegations in paragraph 11 of the Complaint, Petitioners aver that any plan that involves the "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," as stated in paragraph 10 of the Complaint, will not be consistent with the terms of the Trust established in the Will of Louise Jordan Smith. Petitioners lack sufficient information to admit or deny the remaining allegations in paragraph 11 of the Complaint and therefore deny these allegations.

12. In answer to the allegations in paragraph 12 of the Complaint, Petitioners aver that "shar[ing] ownership or sell[ing] certain items of Smith Art" is inconsistent with the terms of the Trust. Petitioners deny that the present circumstances of the College, the value and increase in value of the art purchased using the Trust assets were not anticipated by Miss Smith when she executed her Will. Petitioners aver that the Will speaks for itself and deny any allegations – including Plaintiff's attempt to characterize Miss Smith's "purpose" in the Will –

that vary from the express terms of the Will. Petitioners aver that Plaintiff has improperly characterized Miss Smith's intent in the Will. Petitioners deny Plaintiff's right to any of the relief requested in paragraph 12 of the Complaint. Petitioners deny the remaining allegations in paragraph 12 of the Complaint.

13. Petitioners deny that the parties to the 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. Petitioners aver that they are necessary parties to this cause with interests in the subject matter and outcome of this cause. Petitioners' interests in this cause are detailed in their Motion for Leave to Intervene and Supporting Memorandum. Petitioners deny the remaining allegations in paragraph 13 of the Complaint.

#### **GENERAL DENIALS**

1. Any and all allegations not expressly admitted herein are denied.
2. Petitioners deny that Plaintiff is entitled to any of the relief requested in the Complaint, including the requests in its WHEREFORE paragraph following paragraph 13 of the Complaint.

#### **AFFIRMATIVE DEFENSES**

1. Plaintiff's Complaint fails to state a cause of action upon which relief may be granted.
2. Plaintiff's Complaint is not ripe for adjudication.
3. Plaintiff's Complaint does not comply with the terms of Virginia Code Section 55-542.01, in that Miss Smith's Trust cannot be construed to permit the College to share ownership or sell the Smith Art.

4. Plaintiff's Complaint does not comply with the terms of Virginia Code Section 55-544.12(A), in that Miss Smith anticipated that the College would face financial problems and anticipated that the art purchased with funds from the Trust she established in her Will would increase in value substantially. Further, modification of the Trust will not further the purposes of the Trust.

5. Plaintiff's causes of action are or may be barred in whole or in part by the doctrines of laches, waiver, estoppel and/or other equitable doctrines. Petitioners will undertake sufficient discovery to determine the full extent of these defenses which are set forth to avoid waiving or being estopped from raising and relying on such defenses once the facts underlying Plaintiff's claims are established.

6. Petitioners reserve the right to amend their Answer and to raise any other defenses or claims that become known to them during the course of this matter.

7. Petitioners further reserve the right to assert any defenses raised by the other defendants in this case.

### **JURY TRIAL DEMAND**

Petitioners request a trial by jury of all issues so triable in this action.

WHEREFORE, Petitioners 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 respectfully request that this Court deny Plaintiff's request to sell and/or enter into a joint ownership or partnership arrangement regarding the valuable artwork bequeathed by Miss Smith, dismiss Plaintiff's Complaint with prejudice, award them their costs and attorney's fees

incurred herein and provide such further and other relief as the Court deems necessary and appropriate.

FRANCES PENDLETON ELLIOTT,  
ELEANOR PENDLETON MONAHAN,  
MARGARET WILLIAMS, ELLEN S.  
AGNEW, PAUL WHITEHEAD, JR.,  
SANDRA WHITEHEAD, ROBERTA  
SCRIVENER, ROY CLINTON JOHNS,  
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Counsel for Petitioners

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10<sup>th</sup> day of September, 2007, a true and correct copy of the foregoing pleading was delivered by U.S. Mail, postage prepared to:

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Defendant

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