

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF LYNCHBURG

JENNA DODGE, et al.,

Plaintiffs,

v.

RANDOLPH COLLEGE,

Defendant.

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Case No. CL07-1917

DEFENDANT'S DEMURRER TO PLAINTIFFS' COMPLAINT

Defendant Randolph College (the "College"), by counsel, demurs to the Complaint filed by the Plaintiffs in this matter because the Complaint fails to state facts upon which the relief demanded can be granted and does not state a cause of action. The grounds for the demurrer are described below.

Introductory Statement

The Plaintiffs filed their Complaint seeking temporary and permanent injunctions in an attempt to prevent the College from selling the four pieces of art listed in paragraph 26 of the Complaint (the "Four Paintings"). In the Complaint, the Plaintiffs refer to earlier suits, including (1) *Dodge v. Trustees of Randolph-Macon Woman's College d/b/a/ Randolph-Macon Woman's College*, Case No. CL06-792 (the "Breach of Contract Case"); (2) *Dodge v. Trustees of Randolph-Macon Woman's College d/b/a/ Randolph-Macon Woman's College*, Case No. CL06-894 (the "Charitable Trust Case"); and (3) *Randolph College f/k/a The Trustees of Randolph-Macon Woman's College, Incorporated v. SunTrust Bank et al.*, Case No. CL07-1745 (the "Smith Trust Case"). Even accepting as true for purposes of this demurrer the allegations pled in the Complaint, the Plaintiffs fail to state facts upon which the relief demanded can be granted

and the Complaint does not state a cause of action. Accordingly, the Court should sustain the College's demurrer and dismiss the Complaint with prejudice.

Specific Grounds for the College's Demurrer

1. The Plaintiffs do not have standing to question the College's sale of the Four Paintings. Because the College owns the Four Paintings free of any restrictions, the College may dispose of the Four Paintings upon such terms and conditions as the Board of Trustees of the College believes to be in the best interests of the College as a whole. The Plaintiffs have not alleged and cannot allege that the Four Paintings are subject to legally-recognized restrictions enforceable by the Plaintiffs. In addition, the Plaintiffs have not alleged and cannot allege that the College has breached a duty or a contract with Plaintiffs. Accordingly, none of the Plaintiffs has standing to assert any of the purported causes of action set forth in their Complaint.

2. The Complaint fails to allege facts upon which the injunctive relief demanded can be granted.

(a) Notwithstanding that there has not been a final adjudication in the Breach of Contract Case, the Charitable Trust Case or the Smith Trust Case, the outcome of those cases will have no impact on the College's ability to sell the Four Paintings as alleged in paragraph 67 of the Complaint.

(b) As a matter of law, there is no cause of action for "improper and ill-advised" decisions as alleged in paragraph 68 of the Complaint.

(c) Because the Plaintiffs concede that none of the Four Paintings was purchased with funds drawn from the Trust under the Will of Louise Jordan Smith (*see* Complaint, ¶¶ 31-34), the sale of the Four Paintings will not violate the Smith Trust as alleged in paragraph 69 of the Complaint.

(d) As a matter of law, there is no cause of action based on the alleged breach of “public trust between the College and the Lynchburg Community” as alleged in paragraph 70 of the Complaint.

(e) As a matter of law, there is no cause of action for the alleged breach of Museum ethics standards or deaccessioning policies as alleged in paragraph 71 of the Complaint.

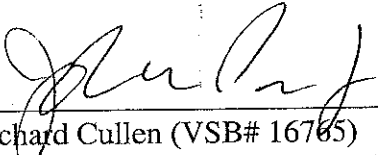
3. The Court does not have jurisdiction to award an injunction in the absence of a legally cognizable underlying cause of action. Because Plaintiffs have not alleged and cannot allege an underlying cause of action, the Plaintiffs fail to state a cause of action.

WHEREFORE, the College respectfully requests that the Court sustain the Demurrer and dismiss the Complaint with prejudice. The College also requests that the Court order the Plaintiffs to reimburse the College for its costs, fees and expenses incurred in defending this action.

Respectfully submitted,

RANDOLPH COLLEGE

By Counsel



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CERTIFICATE OF SERVICE

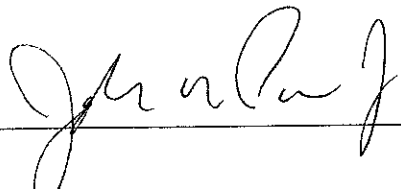
I certify that on October 29, 2007, a true and accurate copy of the foregoing Defendant's

Demurrer was delivered by hand delivery to:

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