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Clerk, Supreme Court of Appeals
Richmond, Va.

207 VA 827

# Record No. 6339

## In the Supreme Court of Appeals of Virginia at Richmond

## PAUL W. GORDON, ET AL.

v.

## BOARD OF SUPERVISORS OF FAIRFAX COUNTY, ET AL.

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m

IN THE

# Supreme Court of Appeals of Virginia

AT RICHMOND

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## Record No. 6339

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VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 19th day of January, 1966.

PAUL W. GORDON AND HARRIET R. GORDON,
Appellants,

*against*

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, CARLTON C. MASSEY, RALPH G. LOUK, LEWIS M. COYNER, STEUART A. REISS, BERGE THOMASIAN, ROBERT W. DARR, WILLIAM A. CLEM, FRANK COWLES, FAIRFAX COUNTY AIRPORT AUTHORITY, ROBERT C. FITZGERALD, Appellees.

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From the Circuit Court of Fairfax County
Albert V. Bryan, Jr., Judge

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Upon the petition of Paul W. Gordon and Harriet R. Gordon an appeal is awarded them from an order entered by the Circuit Court of Fairfax County on the 16th day of July, 1965, in a certain proceeding then therein depending wherein the said petitioners were plaintiffs and Board of Supervisors of Fairfax County and others were defendants; upon the petitioners, or some one for them, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

Mr. Justice Carrico took no part in the consideration or decision in this case.

## RECORD

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page 26 }

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### REQUEST FOR ADMISSIONS

Now come the Defendants, STEUART A. REISS, BERGE THOMASIAN, ROBERT W. DARR, WILLIAM A. CLEM and FRANK COWLES, and request that the Complainants within ten (10) days either admit or deny under oath the truth of the facts set forth as follows:

1. That Chapter 642, Acts of Assembly, 1964, providing for the construction, maintenance, repair and operation of an airport in Fairfax County, Virginia, became effective as of June 26, 1964, as noted on page 1137 of said Acts of Assembly.

2. That the attached copy of the minutes of the July 3, 1964, meeting of the Board of Supervisors of Fairfax County represents the official business of the Board transacted at such meeting, establishing by resolution the Fairfax County Airport Authority.

ROBERT C. FITZGERALD
Counsel for Defendants, Steuart A. Reiss, Berge Thomasian, Robert W. Darr, William A. Clem and Frank Cowles.

Filed Jun 9, 1965.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

* * * * *

page 33 }

* * * * *

## AMENDED BILL OF COMPLAINT FOR DECLARATORY JUDGMENT

Filed Jun 28, 1965.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

* * * * *

page 34 }

* * * * *

Complainants Paul W. Gordon and Harriett R. Gordon submit this, their amended Bill of Complaint, and state as follows:

1. Complainants are citizens and taxpayers of Fairfax County, Virginia, and the United States of America. They bring this suit as taxpayers for themselves and all others similarly situated.

page 35 } 2. Complainants reside on a parcel of land owned by them in Fairfax County, Virginia, which was conveyed to them by deed dated February 14, 1936, and recorded among the land records of Fairfax County, Virginia, in Deed Book B-12 at page 107.

3. Defendants Steuart A. Reiss, Berge Thomasion, Robert W. Darr, William A. Clem and Frank Cowles claim to be members of the Fairfax County Airport Authority, (hereinafter sometimes called "the Authority"), and have announced an intention to construct, operate and maintain an airport in Fairfax County, Virginia, upon the property of your Complainants and other persons.

4. Pursuant to said announced plans and in furtherance thereof, employees and agents of the Authority have entered upon and are continuing to enter upon the lands of your Complainants for the purpose of making surveys, soundings, borings and other examinations.

5. Complainants believe, and therefore allege, that said surveys, soundings, borings and examinations are presently being made by Defendant Edgar R. Trammell and Defendant

Airways Engineering Corporation (hereinafter sometimes called "Airways"), pursuant to a contract hereinafter referred to.

6. Complainants further bring this action as landowners adversely affected by the past and present actions of the Authority its agents and employees, and by the Authority's announced future plans.

7. Defendant Lewis M. Coyner is the Director of Finance of Fairfax County, Virginia.

8. Defendants, the Board of Supervisors of Fairfax County, Virginia, (hereinafter sometimes called "the Board") at a meeting on May 19, 1965, voted to loan the Authority $20,000.00 to compensate the Defendant Edgar R. Trammell and the Defendant Airways in accordance with a contract entered into between the Authority and

page 36 } Edgar R. Trammell, personally, for the preparation of site drawings and specifications for a "project application" for the said airport proposed to be constructed, operated and maintained on the property of your Complainants and others.

9. The motion making said loan provides that it is "to be repaid from future Airport Authority bond issues." A copy of the portion of the minutes of the May 19, 1965, Board meeting dealing with the lending of said funds is attached hereto as "Exhibit A" and incorporated herein by reference.

10. Complainants believe, and therefore allege, that Defendant Edgar R. Trammell is Treasurer and Chief Engineer of Defendant Airways Engineering Corporation, a corporation not qualified to do business in the State of Virginia and having offices at 1212-18th Street, N. W., Washington, D. C.

11. The contract between the Authority and Edgar R. Trammell, referred to in Paragraph 8 hereof, was entered into on July 20, 1964, and provides that "notwithstanding" any other provision thereof the Authority would pay $8,-300.00 to Edgar R. Trammell on or before January 1, 1965.

12. Complainants believe, and therefore allege, that in making the contract referred to in Paragraph 8 hereof, Edgar R. Trammell was acting as agent for Airways and that the said $20,000.00 loan will be paid over in whole or in part to Defendant Edgar R. Trammell and/or Airways.

13. Complainants believe, and therefore allege, that despite the filing of the original Bill of Complaint herein, putting all parties then before the court on notice of the illegality of the said loan, said funds have already been paid over to the Au-

thority and have been disbursed in whole or in part by them.

14. Complainants believe, and therefore allege, that the Board has not enacted any appropriation resolu-
page 37 } tion covering payment of said funds to the Authority as required by Va. Code Ann. §15.1-605 (Repl. Vol. 1964) and that the drawing of the money from the treasury of the County was therefore illegal.

15. Complainants believe, and therefore allege, that said loan constitutes a direct or indirect lending of the credit of Fairfax County, Virginia, to the Authority to the extent of $20,000.00 and that said loan is therefore in violation of §185 of the Constitution of Virginia and is illegal.

16. The motion of the Board making said loan provides that it is to be repaid by the Authority, and whether or not a note for said funds has in fact been given by the Authority to the County of Fairfax, Virginia, the Authority, by accepting said funds, has created an obligation for the purpose of aiding in the construction of its work and the County of Fairfax, Virginia, has become interested in said obligation in violation of §185 of the Virginia Constitution.

17. Said loan is illegal because the Board is not empowered by any statute to make a loan to the Authority.

18. The Authority is expressly forbidden by the Act creating it (hereinafter referred to as "the Act") from incurring any liability or obligation beyond the extent to which moneys "shall have been provided" under the provisions of the Act.

19. As set forth in Paragraph 9 hereof, the Authority incurred a liability and an obligation to Edgar R. Trammell on July 20, 1964, which liability and obligation became fully due and payable on January 1, 1965.

20. Complainants believe, and therefore allege, that no funds have ever been provided to the Authority under the provisions of the Act.

21. Complainants believe, and therefore allege, that the Authority had received no funds whatsoever from any source on July 20, 1964, or on January 1, 1965, and that
page 38 } the only funds ever received by the Authority are the funds purportedly loaned to it by the Board on May 17, 1965.

22. Complainants believe, and therefore allege, that the Authority acted improperly and illegally in incurring expenses and obligations to Edgar R. Trammell at a time when the Authority had received no funds under the provisions of the Act.

23. The contract referred to in Paragraph 8 hereof, insofar as it requires payment to Edgar R. Trammell, is *ultra vires* the Authority and illegal.

24. As set forth in Paragraph 21 hereof the Authority presently has no funds (except the remainder of the loan funds) with which to repay said loan, and the Authority has incurred a liability and obligation to the Board and the County of Fairfax, in at least the amount of $20,000.00. Since the Authority has incurred a liability and obligation to Airways in at least the amount of $8,300.00, it has incurred liabilities and obligations beyond the extent to which moneys have been provided it in direct violation of the last sentence of Section 2 of the Act.

25. Complainants believe, and therefore allege, that the Authority incurred additional liability to Maryland Casualty Company for a premium on a bond posted in Chancery Action 21458 in this Court and that the incurring of said liability is above and beyond the liability of $28,300.00 set forth in Paragraph 24 hereof and was *ultra vires* the Authority and illegal for the reasons set forth in Paragraph 24.

26. Complainants believe, and therefore allege, that the Authority has incurred substantial additional liabilities and obligations, including liability and obligation to Robert C. Fitzgerald, attorney at law, for legal services; liability and obligation to the County of Fairfax for use of the page 39 } personnel of its Land Acquisitions Department; extensive liability and obligation to Fairfax County for use of the time and materials of its Planning staff; liability and obligation to the County of Fairfax for use of the legal services of Ralph G. Louk, Commonwealth's Attorney; and potential liability to your Complainants and Burley C. DeBusk and Arvillee E. DeBusk and others for damages resulting from entry on their land; all of which liabilities and obligations were and continue to be beyond the power of the Authority to create for the reasons set out in Paragraphs 24 and 25 above.

27. Complainants believe, and therefore allege, that the existing liabilities and obligations of the Authority including the $20,000.00 owed the County of Fairfax, Virginia, for the purported loan exceed $40,000.00.

28. The Board, in providing funds for the purpose of allowing the Authority to pay liabilities and obligations which the Authority wrongfully incurred, acted illegally.

29. The Board, even if empowered to make a loan (which

Complainants deny), has abused its discretion to the detriment of all the taxpayers of Fairfax County, Virginia, in making a loan to the Authority without formally requiring a note to be executed by the Authority for said loan, without setting a day certain for the repayment of said loan, and without formally requiring interest to be paid by the Authority on said loan.

30. The Board, even if empowered to make a loan (which Complainants deny), has abused its discretion to the detriment of all the taxpayers of Fairfax County, Virginia, in making a loan to be repaid from a future bond issue of the Authority when the Board has no assurance or guarantee that the Authority will issue bonds or be able to sell bonds and the Board has no power to require the issuance or sale of any bonds by the Authority.

31. The Board, even if empowered to make a loan (which Complainants deny), abused its discretion in mak-
page 40 } ing a loan to an authority, none of whose members had taken the oath of office as required by law.

32. The Board, even if empowered to make a loan (which Complainants deny), abused its discretion in making a loan to an Authority, one of whose members, *viz.* the Defendant Frank Cowles is not a registered voter in Fairfax County, Virginia as required by Section 32 of the Virginia Constitution.

33. Complainants believe and therefore allege that the Defendant Frank Cowles is a registered voter in the City of Alexandria, Virginia, and that he is estopped to claim residence in Fairfax County, Virginia.

34. An actual controversy exists between the Complainants and all Defendants concerning whether the Board can legally lend $20,000.00 to the Authority; whether the Authority can legally expand any of the said funds or legally incur any additional liabilities; and whether any existing or past liabilities and obligations of the Authority have been legally incurred.

WHEREFORE, Complainants pray:

1. That relief be afforded them under the Declaratory Judgment Act §§8-578 through 8-585, Code of Virginia, 1950, as amended;

2. That this Court declare that the Board of Supervisors

of Fairfax County acted in violation of §185 of the Constitution of Virginia, illegally, and without authority in attempting to make a loan of $20,000.00 to the Fairfax County Airport Authority on May 19, 1965;

3. That this Court declare that Lewis M. Coyner acted illegally and improperly in paying over funds of Fairfax County, Virginia, without being authorized to do so by appropriation resolution duly enacted;

page 41 } 4. That this Court declare that the contract dated July 20, 1964, between the Fairfax County Airport Authority and Edgar R. Trammell is *ultra vires* the Fairfax County Airport Authority insofar as it created a liability and obligation of the Authority at a time when the Authority had been provided no funds;

5. That this Court declare that the actions of the Fairfax County Airport Authority in creating liabilities and obligations to the County of Fairfax, Maryland Casualty Company and Robert C. Fitzgerald beyond the extent to which moneys have been provided were and are *ultra vires* the Authority;

6. That this Court determine the exact nature and amount of all of the present and past liabilities and obligations of the Fairfax County Airport Authority;

7. That this Court enjoin the Fairfax County Airport Authority from disbursing, or further disbursing, any of the funds received from the County of Fairfax, Virginia;

8. That this Court require the Fairfax County Airport Authority and Steuart A. Reiss, Berge Thomasian, Robert W. Darr, William A. Clem and Frank Cowles to refund $20,000.00 with interest thereon from May 17, 1965, to Fairfax County, Virginia.

9. That this Court require any persons, firms or corporations who have received funds from the Fairfax County Airport Authority to refund said funds to the Authority.

10. For an award of costs against the Defendants jointly and severally;

11. For such further ancillary relief as the nature of this cause and the adjudications herein may require.

PAUL W. GORDON
By PAUL W. GORDON
Counsel.
HARRIETT R. GORDON
By HARRIETT R. GORDON
Counsel.

page 42 } Hardee Chambliss
P. O. Box 187
Centreville, Virginia

and

RANDOLPH W. CHURCH, JR.
4011 Chain Bridge Road
Fairfax, Virginia.

I hereby certify that on the 28th day of June, 1965, I mailed copies of the foregoing Amended Bill of Complaint for Declaratory Judgment to Robert C. Fitzgerald, Esquire, Commonwealth Building, 301 Park Avenue, Falls Church, Virginia, Counsel for Defendants, Steuart A. Reiss, Berge Thomasian, Robert W. Darr, William A. Clem and Frank Cowles; and Donald C. Crounse, Esquire, Assistant Commonwealth's Attorney, Fairfax County Court House, Fairfax, Virginia, Counsel for the Fairfax County Board of Supervisors, Carlton C. Massey, Ralph Louk and Lewis M. Coyner.

RANDOLPH W. CHURCH, JR.

page 43 } EXHIBIT A

of Barkley;
thence departing the southeasterly line of Glen Forest Subdivision and running with the southwesterly line of Barkley S 42 deg. 27′50″ E 130.71 feet to the point of beginning, containing 0.526 acres.

AND

Beginning at a point in the northwesterly line of Cedar Drive, said point also being in the northeasterly line of the land of Burr;
thence departing the northwesterly line of Cedar Drive and running with the northeasterly line of Burr, N 42 deg. 31′ W 130.36 feet to a point in the southeasterly line of Glen Forest Subdivision, Section III;
thence departing the northeasterly line of the land of Burr and running with the southeasterly line of Glen Forest Subdivision, N 47 deg. 24′ E 133.70 feet to a point;

thence departing the southeasterly line of Glen Forest Subdivision and running through the land of Brady, S 42 deg. 31′ E 130.55 feet to a point in the aforementioned northwesterly line of Cedar Drive;
thence with the northwesterly line of Cedar Drive, S 47 deg. 29′ W 133.70 feet to the point of beginning, containing 0.4004 acres.

WHEREAS, the said application, having been found by this Board to be in proper form and accompanied by the required map or blueprint and the receipt showing payment of the fee required to be paid at the time of the filing thereof, was promptly referred to the County Planning Commission of this County for its investigation and a report of its recommendations thereon, and was duly advertised for public hearing thereon before this Board in the manner and for the time required by the Zoning Ordinance of this County, as amended, and by Chapter 415, Acts of Assembly of Virginia, 1938; and,

WHEREAS, said public hearing on said application has been this day held, and said Board has considered the recommendations of said County Planning Commission, duly filed, and the evidence presented in connection with said application at the public hearing, and has reached its decision on said application. Now, therefore, be it

RESOLVED, that the said application be, and the same hereby is, granted, and that the aforesaid land hereinbefore and in said application more specifically described be, and hereby is, rezoned from R-12.5 District to R-T District, as set forth and defined in the said Zoning Ordinance and amendments thereto subject to the use regulations permitted in such R-T District, and that the Zoning Administrator of the County be, and he hereby is, directed to correct the Zoning Map heretofore adopted as a part of the Zoning Ordinance to properly show such change in the zoning of said land, and that the Clerk of this Board be, and she now hereby is, directed to transmit duly certified copies of this resolution to the applicant, Zoning Administrator and to the Director of Planning of this County as soon as possible.

The County Executive called attention to the fact that Vice-President Humphrey was planning to have a conference tomorrow with managers of cities of over fifty thousand pop-

ulation and that he had been invited and expected to attend that conference.

The County Executive said he believed all Board members had received copies of a communication from page 44 } FAA indicating that they have now given site clearance to the Pope's Head Site and had also authorized a transfer of previously approved funds to that site for an airport to be located in Fairfax County, Virginia.

Supervisor Alexander said now that the airport site has been cleared he was wondering if the Board was ready to grant the County Airport Authority's request for an advance of funds pending the full funding of this operation.

Supervisor Parris said in discussing this with several members of the Airport Authority on receipt of the notification mentioned by the County Executive it was his understanding that the Airport Authority would proceed with the preparation of construction drawings and specifications in order that a Project Application (FAA Form No. 1624) may be submitted at an early date, but in any case no later than June 30, 1965. He said the purpose for the Airport Authority's request was to compensate the engineers in accordance with their previous agreement for the accomplishment of the preparation of site drawings and specifications for the project application. He said the Authority proposes to repay these funds out of the bond revenues at the time of the issuance of the same and has requested an advance of funds in the sum of $20,000.00, and he thereupon moved that the Board authorize the loan of $20,000.00 to be made to the Fairfax County Airport Authority to be repaid from future Airport Authority bond issues. This motion was seconded by Supervisor Alexander. (Supervisor Babson left the Board Room at 12:40 P.M.)

After a brief discussion the Chairman called for the vote on the motion which carried by a vote of five, Supervisors Babson and Beerman being out of the room at this time.

The County Executive said he had sent Board members copies of the Commonwealth Attorneys' reply to Mr. Paul Peachey's letter of last week in which he advised Mr. Peachey that if he desired to make a straightforward request for variances to site plan requirements that the Board would be glad to give consideration to them. He said Mr. Peachey replied to that, and he had given Board members copies of his reply, and he would like to have some guidance from Mr. Louk as to whether the Board should do anything further.

Mr. Louk said he had pointed out to Mr. Peachey that under the existing ordinances of the County and laws of the State he could make application for waivers of site plan requirements but he did not understand from his letter that he was making that application so he would advise that no action from the Board would be necessary. (Supervisor Beerman returned to the Board Room at 12:45 P.M.)

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page 82 }

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Fairfax County Courthouse,
Fairfax, Virginia, 22030,
July 13, 1965.

* * * * *

Gentlemen:

I have considered the Amended Bill of Complaint and Demurrer in light of the authorities and memoranda submitted and, by agreement of counsel, the same arguments advanced on June 18, 1965.

With regard to the qualifications of the members of the Authority, I do not believe Va. Const. Sec. 32 limits the eligibility, but only the requirements that may be imposed on eligibility, for state office; however, even if the members are not qualified, I believe the acts of the authority are not invalid for that reason. Va. Code Ann. Sec. 2-33(1950).

I do not feel Va. Const. Sec. 185 is applicable, nor that there is any real difference in adopting an appropriation of money by motion and by resolution.

As indicated by counsel for Complainants, the real issue here is whether the so-called "advance" is lawful. I think it is. Necessarily implicit in the power to create the Authority given the Board of Supervisors by Va. Acts 1964, Ch. 642, Sec. 3, is the power to "advance" to the Authority
page 83 } sufficient money to finance it temporarily pending receipt of proceeds from the revenue bonds and through the Federal Airport Act (49 U.S.C. 1101, et seq.) as contemplated by the Virginia Act. The fact that the Act itself does not specifically empower the Board to lend money to the Authority (See e.g. Va. Code Ann. Sec. 15.1-1250(hl) (Repl. Vol. 1964)) does not, when the Act is considered as a

whole, render the $20,000.00 advance beyond the Board's power. Any other construction of the Act is unrealistically strict.

The demurrer is sustained and counsel for Defendants should prepare a decree to that effect and present the same for entry after submission to Messrs. Church and Chambliss for approval as to form.

Very truly yours,

Albert V. Bryan, Jr.

AVB:elc

page 84 }

* * * * *

Filed Jul 14, 1965.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

DEMURRER.

Now come the Defendants, Steuart A. Reiss, Berge Thomasian, Robert W. Darr, William A. Clem, Frank Cowles, and Fairfax County Airport Authority and Robert C. Fitzgerald, Esq., and file this, their Demurrer to the Amended Bill of Complaint filed herein by Complainants, and for their reasons therefore state as follows:

1. Section 185 of the Constitution of Virginia is not applicable to this cause.
2. Exhibit "A" of the Amended Bill of Complaint shows that the expenditure of funds involved was authorized by resolution, contrary to what is alleged in paragraph (14) of the Amended Bill of Complaint.
3. Members of the Fairfax County Airport Authority are not required by law to take an oath, as alleged in paragraph (31).
4. Even if the members of the Fairfax County Airport Authority are required by law to take an oath (which Defendants deny), the question is moot, because an oath has been taken by all the members.

5. Defendant Frank Cowles is not required to be a registered voter, as alleged in paragraph (32) of the Amended Bill of Complaint.

6. Even if Defendant Frank Cowles is required to be a registered voter (which Defendants deny), he is
page 85 } not required by law to be registered in Fairfax County, Virginia, as alleged in Paragraph (32).

7. Defendant Frank Cowles is in no event estopped to claim residence in Fairfax County, as alleged in Paragraph (33).

8. The Amended Bill of Complaint sets forth no facts which show an abuse of discretion or illegal act on the part of the Board of Supervisors of Fairfax County.

9. The Amended Bill of Complaint sets forth no facts which show an *ultra vires* or illegal act by the Defendants herein.

WHEREFORE, the Defendants pray that the Amended Bill of Complaint filed by Complainants herein be dismissed.

ROBERT C. FITZGERALD
Counsel for Defendants.

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page 86 }

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## BILL OF PARTICULARS.

Now come the Defendants, STEUART A. REISS, BERGE THOMASIAN, ROBERT W. DARR, WILLIAM A. CLEM and FRANK COWLES, and in response to the Motion filed herein by Complainants to state more particularly the grounds of the Demurrer filed herein, state as follows:

1. The Bill of Complaint is not sufficient in law in that it states no set of facts upon which the relief requested may be granted.

2. The Bill of Complaint pleads only conclusions of law which are not supported by well-pleaded allegations of fact.

3. The Bill of Complaint shows on its face that the Fairfax County Airport Authority as an entity is an indispensable party which has not been properly made a party to the cause.

WHEREFORE, the Defendants pray that the Demurrer filed heretofore herein be granted and the cause dismissed with costs to Defendants.

ROBERT C. FITZGERALD
Counsel for Defendants,
Steuart A. Reiss, Berge Thomasian, Robert W. Darr, William A. Clem and Frank Cowles.

Filed Jul 14, 1965.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

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page 96 }

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DECREE GRANTING LEAVE TO FILE AMENDED BILL OF COMPLAINT.

THIS CAUSE came on the 18th day of June, 1965, to be heard upon Notice to Defendants, the Bill of Complaint herein, and the Demurrer and Motion to Strike filed herein by Defendants, STEUART A. REISS, BERGE THOMASIAN, WILLIAM A. CLEM, ROBERT W. DARR and FRANK COWLES, and the Demurrer filed herein by Defendants, THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, RALPH LOUK and LEWIS M. COYNER, and was argued by Counsel.

Thereupon, Complainants by oral motion moved the Court for leave to file an Amended Bill of Complaint, and it appearing to the Court that such leave should be granted, the Motion to Strike and the Demurrers filed herein by Defendants were taken under advisement by the Court. It is, therefore,

ADJUDGED, ORDERED and DECREED that Complainants be granted leave to file an Amended Bill of Complaint within ten days from the date of this Order, June 18, 1965.

A. V. B., JR.
Judge of said Court.

July 16th, 1965.

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page 97 }

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ORDER SUSTAINING DEMURRER AND DISMISSING AMENDED BILL OF COMPLAINT.

This cause came on this 16th day of July, 1965, to be heard upon the Amended Bill of Complaint for Declaratory Judgment, the Demurrer filed by Defendants STEUART A. REISS, BERGE THOMASIAN, ROBERT W. DARR, WILLIAM A. CLEM, FRANK COWLES and the FAIRFAX COUNTY AIRPORT AUTHORITY, memoranda submitted by Complainants and Defendants and was argued by Counsel.

And it appearing to the Court upon consideration of said memoranda and argument of Counsel that said Demurrer is well taken and should be sustained, it is, therefore, for the reasons stated in the Court's letter of July 13, 1965,

ADJUDGED, ORDERED and DECREED that the Demurrer of Defendants herein be sustained and the Amended Bill of Complaint for Declaratory Judgment be dismissed, to which ruling Complainants except.

A. V. B., JR.
Judge of said Court.

SEEN and EXCEPTED:

HARDEE CHAMBLISS
RANDOLPH W. CHURCH, JR.
Counsel for Complainants.

SEEN:

.....
Counsel for Defendant,
The Board of Supervisors of
Fairfax County, Virginia.

ROBERT C. FITZGERALD
Counsel for Defendants Reiss,
Thomasian, Darr, Clem, Cowles and
Fairfax County Airport Authority.

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page 98 }

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Filed Aug. 19, 1965.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County.

* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

The Complaints in this cause are aggrieved by a final decree entered herein on the 16th day of July, 1965, and file this notice of appeal and assign the following error:

The Court erred in sustaining the demurrer filed by Steuart A. Reiss, Berge Thomasian, Robert W. Darr, William A. Clem, Frank Cowles, and Fairfax County Airport Authority and Robert C. Fitzgerald, Esq., for the following reasons:

a. The Court erred in holding that the Board of Supervisors of Fairfax County, Virginia, has power to lend or "advance" money to the Fairfax County Airport Authority.

b. The Court erred in holding that the Board of Supervisors of Fairfax County, Virginia, may appropriate money by mere motion.

c. The Court erred in sustaining the demurrer since, as alleged in the amended bill of complaint, the Fairfax County Airport Authority has no power to incur an obligation to the Board of Supervisors for the funds allegedly loaned or "advanced," which the Authority was required to do in order to accept the said funds. The Fairfax County Airport Authority therefore had no power to accept the said funds.

d. The Court erred in sustaining the demurrer since the bill of complaint made out a *prima facie* case that the Board of Supervisors has acted arbitrarily and capriciously and had abused its discretion in attempting to loan or "advance"

money to the Fairfax County Airport Authority.

page 99 } e. The Court erred in sustaining the demurrer before the time had expired for all defendants to answer and before all defendants had answered.

PAUL W. GORDON
By PAUL W. GORDON
Counsel RWC

HARRIETT R. GORDON
By HARRIETT R. GORDON
Counsel RWC

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

# INDEX TO RECORD


| | Page |
|---|---|
| Appeal Awarded | 1 |
| Record | 2 |
| Request for Admissions | 2 |
| Amended Bill of Complaint for Declaratory Judgment | 3 |
| Exhibit A | 9 |
| Letter, Opinion—July 13, 1965 | 12 |
| Demurrer | 13 |
| Bill of Particulars | 14 |
| Decree—July 16, 1965 | 15 |
| Decree—July 16, 1965 | 16 |
| Notice of Appeal and Assignments of Error | 17 |