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SUPREME COURT OF VIRGINIA
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IN THE

Supreme Court of Virginia

AT RICHMOND

Record No. 730394

SEVENTEEN, INC.

Appellant,

v.

PILOT LIFE INSURANCE COMPANY,

Appellee.

JOINT APPENDIX

Edward L. Breeden, Jr., William C. Walker,
David K. Sutelan
Breeden, Howard & McMillan
1530 Virginia National Bank Building
Norfolk, Virginia 23510
Counsel for Appellant

J. Hume Taylor, Jr.
1805 Virginia National Bank Building
Norfolk, Virginia 23510
Counsel for Appellee

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

SEVENTEEN, INC., a Virginia corporation,	:	
Plaintiff,	:	
vs.	:	
CITY OF CHESAPEAKE, a Municiple corporation SERVE: William L. Forbes, City Attorney Chesapeake Professional Building Chesapeake, Virginia	:	
REAL ESTATE GROWTH, INC., a Virginia corporation SERVE: Dudley DuB. Cocke, Registered Agent 101 Royster Building Norfolk, Virginia	:	IN CHANCERY NO.
and	:	
VIRGINIA STATE HIGHWAY COMMISSION SERVE: Douglas B. Fugate, Chairman Richmond, Virginia,	:	
Defendants.	:	

BILL FOR INJUNCTION

Now comes the Complainant, Seventeen, Inc., and for its Bill for Injunction, states as follows:

1. That your Complainant is a corporation duly organized and existing under the laws of the State of Virginia, and is empowered to engage in the purchase, sale, lease, mortgage and improvement of real property.

2. That your Complainant, on January 12, 1966, did purchase a certain tract, piece or parcel of land, containing approximately 2.32 acres and located on the south side of State Highway Route 17-A, between Poplar Hill Road and Taylor Road in Western Branch Borough of the City of Chesapeake, Virginia.

3. That prior to the aforesaid conveyance to your Complainant, the Estate of John S. Wise, a predecessor in title to your Complainant, under threat of condemnation, did convey to the Commonwealth of Virginia a certain tract, piece or parcel of land for "the location and construction or other improvement" of State Route 17, Project 2064-09, in the City of Chesapeake, Virginia, by deed dated July 14, 1958, duly of record in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia, in Deed Book 1267, at page 200; together with an easement across the lands of the Estate of John S. Wise for the stated purpose of constructing and maintaining a "drain ditch for the sole purpose as therein indicated on plans" which plans are recorded in the aforesaid Clerk's Office in State Highway Plat Book #1, at page 488. The aforesaid deed and plat are attached hereto and marked Complainant's Exhibits "A" and "B" respectively and are intended to be incorporated by reference herein and to be read as a part of these pleadings.

4. That the said Commonwealth of Virginia acting by and through its agent, the Virginia State Highway Commission did complete construction of project number 2064-09 and placed an 18 inch drainage pipe under the said State Route 17-A, in accordance with the plans and specifications heretofore described.

5. That by deed dated December 24, 1968, your co-Respondent, Real Estate Growth, Inc., did purchase of the said John S. Wise Estate, a certain tract or parcel of land in the Western Branch Borough of the City of Chesapeake, Virginia and located on the north side of State Route 17-A opposite the property of your Complainant.

6. That subsequent to the purchase by your Complainant of the tract of land aforesaid, it did, in accordance with all applicable ordinances of

the City of Chesapeake, Virginia, began development of the aforesaid property and has in fact placed certain tenants along portions of said property.

7. That in 1969 and/or 1970 your co-Respondent Real Estate Growth, Inc. in furtherance of its plans for the development of a shopping center did through its agents, servants and/or employees prepare and submit to the Department of Public Works of the City of Chesapeake, Virginia, a site plan which included among other items a proposed drainage system through which surface water accumulating on the shopping center property would be artifically channeled into underground conduits leading to State Route 17-A where the aforementioned 18 inch drainage pipe had been previously installed. Your Complainant believes and therefore alleges that said site plan included a proposed enlargement of said 18 inch drainage pipe to one of a diameter of 48 inches which would be necessary to carry the additional surface waters occasioned by the construction of the proposed shopping center.

8. That your Complainant believes and therefore alleges that the City of Chesapeake, through its agents, servants and/or employees did, in disregard of the rights of your Complainant, approve said site plan with knowledge that, under existing, contemporary engineering standards, the proposed site plan, and in particular the drainage facilities contemplated, would cause a misuse of the existing easement across the lands of your Complainant.

9. That your Complainant would further allege that subsequent to the approval of the aforesaid site plan, the Respondents, City of Chesapeake and Real Estate Growth, Inc., with the further approval of the State Highway Commission and in violation of the nature and use of the easement theretofore granted it did replace the 18 inch drainage pipe with one of a 48 inch diameter.

10. That your Complainant upon discovery of the construction of the enlarged drainage pipe, protested both orally and in writing and has continued to protest the unwarranted and unnatural collection of surface waters upon the lands of the Respondent, Real Estate Growth, Inc. and channeling the same through the enlarged drainage pipe, and into the aforesaid drainage ditch onto the lands of your Complainant in violation of its rights.

11. Your Complainant would further allege that the said acts of the Respondents and each of them, if continued, will cause great and irreparable injury, damage and destruction to its property, from the nature and character of which said injury redress at law would be uncertain and inadequate, and that damages resulting therefrom would be impossible of ascertainment and further that your Complainant has no adequate remedy at law.

WHEREFORE, your Complainant prays that the Court take jurisdiction of the controversy herein, that the Respondents be made parties hereto and required to answer the allegations thereof, but not under oath, answers under oath being hereby expressly waived, that the Respondents and each of them, their servants, agents or other parties acting in their behalf be perpetually enjoined and restrained from diverting into the drainage ditch aforesaid at any time more than the amount of drainage water originally contemplated at the time the said easement was granted, or acting in any way or manner so as to increase the burden or servitude upon the lands of the Complainant, and that your Complainant may be granted such other, further and general relief as the nature of the case may require or to equity shall seem meet.

And your Complainant will ever pray, etc.

SEVENTEEN, INC.

By /s/ David K. Sutelan
Of Counsel

Breeden, Howard & MacMillan
1530 Virginia National Bank Bldg.
Norfolk, Virginia 23510

John S. Wise, Estate
TO B & S
Commonwealth of Virginia

4391

No Tax

This Deed, *Made this* 11th *day of* July, *19*58, *by and between* John S. Wise Estate, Stewart W. Johnson, also known as Mary S. Johnson, Widow, and Lucy Wortley Wise, unmarried *of* Norfolk *County, Virginia, hereinafter designated as grantor (even though more than one), and the COMMONWEALTH OF VIRGINIA, Grantee:*

Witnesseth; *In consideration of the benefits accruing or to accrue to the said grantor, by reason of the location and construction, or other improvement of part of State Highway Route* 17, *Project* 2064-09 *between* 3.156 Mi. W. of W. End of Churchland Br. *and* 1.738 Mi. W. of W. End of Churchland Br. *along, through, or over the lands of the grantor, and for further consideration paid by the grantee to the grantor, receipt of which is hereby acknowledged, the said grantor hereby grants and conveys unto said grantee with general warranty the land of the grantor needed for the location and construction or other improvement of said highway, the said land being as shown on a plan and survey of the said highway, on file in the office of the Department of Highways at Richmond, identified as Sheet No.* 5, *Project* 2064-09, *Route* 17, *all of said land being located in* _____ *Magisterial District, in* Norfolk *County, and described as follows:*

Being as shown on plans approved May 26, 1958, and lying on both sides of and adjacent to the survey centerline from the east right of way line of Route 659 at approximate Station 29+61.5 to the lands of C. D. Lane, Jr., at approximate Station 39+31 (center of existing Route 3705), including connections to Routes 659 and 3705, together with the right to construct and maintain drain ditch as indicated on plans and containing 3.26 acres, more or less, land, of which 0.09 acre is included in the existing right of way and 3.17 acres, more or less, is additional land, and being a part of the same land acquired by the grantor by deed recorded in Deed Book _____, Page _____, in the office of the Clerk of the Circuit Court of said County.

For a more particular description of the land herein conveyed, reference is made to photo copy of said Sheet No. 5, showing outlined in RED the land conveyed in fee simple which photo copy is hereto attached as a part of this conveyance and recorded simultaneously herewith in the State Highway Plat Book.

See State Hwy Plat Book 1 page 488

EXHIBIT "A"

The said grantor covenants that he has the right to convey the said land to the grantee; that he has done no act to encumber the said land; that the grantee shall have quiet possession of the land, free from all encumbrances, and that he will execute such further assurance of the said land as may be requisite.

The said grantor covenants and agrees for himself, his heirs and assigns and successors, that the considerations hereinabove mentioned and paid to him shall be in lieu of any and all claims to compensation and damages by reason of the location, construction, and maintenance of said highway, including such drainage facilities as may be necessary.

WITNESS the following signatures and seals:

Stewart W. Johnson [SEAL]
Mary S. Johnson [SEAL]
Lucy Wortley Wise [SEAL]
[SEAL]
[SEAL]
[SEAL]
[SEAL]
[SEAL]

STATE OF VIRGINIA,

County of _____, To-wit:

I, _____, a Notary Public in and for the County aforesaid, in the State of Virginia, do certify that Stewart W. Johnson, also known as Mary S. Johnson, widow and Lucy Wortley Wise, unmarried, whose names are signed to the foregoing writing, bearing date on the 14th day of July, 19 58, have each acknowledged the same before me in my County aforesaid.

My term of office expires Dec 31 1959

Given under my hand this 21 day of August, 19 58

Alice E. Kenney
~~Notary Public~~ J.P.

STATE OF VIRGINIA,

County of Chesapeake, To-wit:

I, Alice E. Kenney, a ~~Notary Public~~ Justice of the Peace in and for the County aforesaid, in the State of Virginia, do certify that Stewart W. Johnson, also known as Mary S. Johnson and Lucy Wortley Wise, whose names are signed to the foregoing writing, bearing date on the 21 day of August, 19 58, have each acknowledged the same before me in my County aforesaid.

My term of office expires Dec 31 1958

Given under my hand this 21 day of August, 19 58

Alice E. Kenney
~~Notary Public~~ Justice of Peace

VIRGINIA:- In the Clerk's Office of Circuit Court of Norfolk County

Aug. 25 1958 at 9:55 AM

This Deed was presented in Office with the certificate annexed and admitted to record.

Teste: Major M. Hillard, Clerk

By A. E. Ball D. C.

COPY, TESTE: CHARLES D. GROSS, JR., CLERK

By _____ D. C.

State Hwy. Plat Book 1 page 488

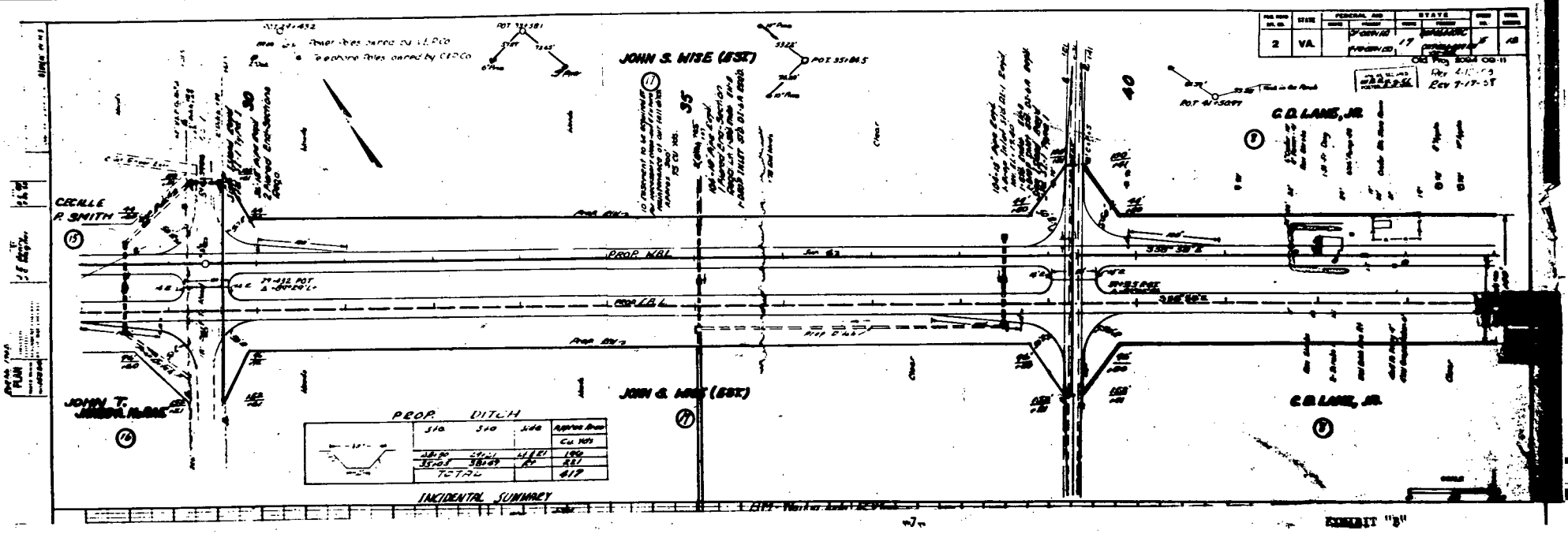

EXHIBIT "B"

V I R G I N I A :

IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

SEVENTEEN, INC., a Virginia corporation Plaintiff,	:	
vs.	:	
CITY OF CHESAPEAKE, a Municipal corporation	:	IN CHANCERY NO. 13849
REAL ESTATE GROWTH, INC., a Virginia corporation	:	
and	:	
VIRGINIA STATE HIGHWAY COMMISSION	:	
Defendants.	:	

DEMURRER

The defendant, Real Estate Growth, Inc., for its Demurrer to the Bill for Injunction exhibited against it states that:

1. There is no equity in the Bill as to the said defendant and the Bill for Injunction states no proper complaint, and further the Bill for Injunction is not sufficient in law, especially in the particulars set out below.

2. The defendant, Real Estate Growth, Inc., is not now the fee simple owner of the property set forth in the Bill for Injunction.

3. The Bill is insufficient in that the defendant, Real Estate Growth, Inc., did not have and does not now have any control over the drainage from the property, the control and plans for such drainage being solely within the jurisdiction of the defendants, City of Chesapeake and Virginia State Highway Commission.

4. The Bill is insufficient in that there is no allegation in said Bill for Injunction that the defendant, Real Estate Growth, Inc., has done anything with reference to the drainage except what it was directed to do by the City of Chesapeake and the Virginia State Highway Commission.

And having stated its demurrer, this defendant prays that the Bill for Injunction exhibited against it may be dismissed and that it may have its costs in this matter expended.

REAL ESTATE GROWTH, INC.,
a Virginia corporation

By Dudley DuB. Cocke
of Counsel

Dudley DuB. Cocke
Cocke and Taylor
101 Royster Building
Norfolk, Virginia 23510

I hereby certify that copies of this above plea were mailed this 8th day of October, 1971, to Breeden, Howard & MacMillan, 1530 Virginia National Bank Building, Norfolk, Virginia, Attorney for the Complainant, and to William L. Forbes, City Attorney for the City of Chesapeake, Chesapeake Professional Building, Chesapeake, Virginia, and to Douglas B. Fugate, Chairman, Virginia State Highway Commission, Richmond, Virginia.

Dudley DuB. Cocke

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE
on the 22nd day of November 1971

SEVENTEEN, INC., a Virginia corporation,	:	
Complainant,	:	
v.	:	IN CHANCERY NO. 13849
CITY OF CHESAPEAKE, a Municipal corporation, et al,	:	
Respondents.	:	

O R D E R

Upon motion of the Complainant, Seventeen, Inc., for leave to file an Amended Bill for Injunction substituting and adding as a party defendant Pilot Life Insurance Company, the fee simple owner of the property referred to in paragraph 5 of the Bill for Injunction, it is

ADJUDGED, ORDERED and DECREED that the Complainant be and they hereby are, granted leave to file an Amended Bill for Injunction adding as a party defendant, Pilot Life Insurance Company.

ENTER:

/s/ Robert S. Wahab
Judge

I ask for this:

/s/ David K. Sutelan
Attorney for Seventeen, Inc.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

SEVENTEEN, INC., a Virginia corporation, Complainant, v. CITY OF CHESAPEAKE, a Municipal corporation, SERVE: William L. Forbes City Attorney Chesapeake Professional Bldg. Chesapeake, Virginia and PILOT LIFE INSURANCE COMPANY, a North Carolina corporation, SERVE: William R. Shands Registered Agent Mutual Building Richmond, Virginia and DOUGLAS B. FUGATE Virginia State Highway Commissioner Richmond, Virginia Respondents.	IN CHANCERY NO. 13849

AMENDED BILL FOR INJUNCTION

Now comes the Complainant, Seventeen, Inc., for its Amended Bill for Injunction, and states as follows:

1. That your Complainant is a corporation duly organized and existing under the laws of the State of Virginia, and is empowered to engage in the purchase, sale, lease, mortgage and improvement of real property.

2. That your Complainant on January 12, 1966, did purchase a certain tract, piece or parcel of land, containing approximately 2.32 acres and located in the south side of State Highway Route 17-A,

between Poplar Hill and Taylor Road in Western Branch Borough of the City of Chesapeake, Virginia.

3. That prior to the aforesaid conveyance to your Complainant, the Estate of John S. Wise, a predecessor in title to your Complainant, under threat of condemnation, did convey to the Commonwealth of Virginia a certain tract, piece or parcel of land for "the location and construction or other improvement" of State Route 17, Project 2064-09, in the City of Chesapeake, Virginia, by deed dated July 14, 1958, duly of record in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia, in Deed Book 1267, at page 200; together with an easement across the lands of the Estate of John S. Wise for the stated purpose of constructing and maintaining a drain ditch for the sole purpose as therein indicated on plans which plans are recorded in the aforesaid Clerk's Office in State Highway Plat Book #1, at page 488. The aforesaid deed and plat are attached hereto and marked Complainant's Exhibits "A" and "B", respectively and are intended to be incorporated by reference herein and to be read as a part of these pleadings.

4. That the said Commonwealth of Virginia acting by and through its agent, Douglas B. Fugate, Virginia State Highway Commissioner, did complete construction of project number 2064-09 and placed an 18 inch drainage pipe under the said State Route 17-A, in accordance with the plans and specifications heretofore described.

5. That by deed dated December 24, 1968, Real Estate Growth, Inc. did purchase of the said John S. Wise Estate a certain tract or parcel of land in the Western Branch Borough of the City of Chesapeake, Virginia, and located on the north side of State Route 17-A

opposite the property of your Complainant. Subsequent thereto, the said Real Estate Growth, Inc. and one Churchland Associates Limited Partnership, a limited partnership established with the said Real Estate Growth, Inc. as a general partner, did convey the aforesaid property to your co-Respondent, Pilot Life Insurance Company, a North Carolina corporation, by deed dated August 13, 1971, and recorded in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia, in Deed Book 1603, at page 64.

6. That subsequent to the purchase by your Complainant of the tract of land aforesaid, it did, in accordance with all applicable ordinances of the City of Chesapeake, Virginia, begin development of the aforesaid property and has in fact placed certain tenants along portions of said property.

7. That in 1969 and/or 1970, the said Real Estate Growth, Inc., the predecessor in title to your co-Respondent, Pilot Life Insurance Company, in furtherance of its plans for the development of a shopping center did, through its agents, servants and/or employees, prepare and submit to the Department of Public Works of the City of Chesapeake, Virginia, a site plan which included among other items a proposed drainage system through which surface water accumulating on the shopping center property would be artificially channeled into underground conduits leading to State Route 17-A where the aforementioned 18 inch drainage pipe had been previously installed. Your Complainant believes and therefore alleges that said site plan included a proposed enlargement of said 18 inch drainage pipe to one of a diameter of 48 inches which would be necessary to carry the additional surface water occasioned by the construction of the proposed shopping

center.

8. That your Complainant believes and therefore alleges that the City of Chesapeake, through its agents, servants and/or employees did, in disregard of the rights of your Complainant, approve said site plan with knowledge that, under existing, contemporary engineering standards, the proposed site plan, and in particular the drainage facilities contemplated, would cause a misuse of the existing easement across the lands of your Complainant.

9. That your Complainant would further allege that subsequent to the approval of the aforesaid site plan, the Respondent, City of Chesapeake, and the said Real Estate Growth, Inc., the predecessor in title to your co-Respondent, Pilot Life Insurance Company, with the further approval of the said Douglas B. Fugate, Virginia State Highway Commissioner, and in violation of the nature and use of the easement theretofore granted did replace the 18 inch drainage pipe with one of a 48 inch diameter.

10. That your Complainant upon discovery of the construction and installation of the enlarged drainage pipe did protest both orally and in writing and has continued to protest the unwarranted and unnatural collection of surface waters upon the lands of the Respondent, Pilot Life Insurance Company, and channeling the same through the enlarged drainage pipe, and into the aforesaid drainage ditch onto the lands of your Complainant in violation of its rights.

11. Your Complainant would further allege that the said acts of the Respondents and each of them, if continued, will cause great and irreparable injury, damage and destruction to its property, from the nature and character of which said injury redress at law would be

uncertain and inadequate, and that damages resulting therefrom would be impossible of ascertainment and further that your Complainant has no adequate remedy at law.

WHEREFORE, your Complainant prays that the Court take jurisdiction of the controversy herein, that the Respondents be made parties hereto and required to answer the allegations thereof, but not under oath, answers under oath being hereby expressly waived, that the Respondents and each of them, their servants, agents or other parties acting in their behalf be perpetually enjoined and restrained from diverting into the drainage ditch aforesaid at any time more than the amount of drainage water originally contemplated at the time the said easement was granted, or acting in any way or manner so as to increase the burden or servitude upon the lands of the Complainant, and that your Complainant may be granted such other, further and general relief as the nature of the case may require or to equity shall seem meet.

And your Complainant will ever pray, etc.

SEVENTEEN, INC.

By /s/ David K. Sutelan
Of Counsel

Breeden, Howard & MacMillan
1530 Virginia National Bank Bldg.
Norfolk, Virginia 23510

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE
on the 22nd day of November 1971

SEVENTEEN, INC., a Virginia corporation,	:	
Complainant,	:	
v.	:	IN CHANCERY NO. 13849
CITY OF CHESAPEAKE, a Municipal corporation, et al,	:	
Respondents.	:	

O R D E R

This day came the parties, by counsel, upon the Demurrer heretofore filed by the Respondent, Real Estate Growth, Inc., and the same was argued by counsel.

WHEREFORE, it appearing to the Court that the said Real Estate Growth, Inc. is no longer the fee simple owner of the property as alleged in paragraph 5 of the Bill for Injunction, it is thereby

ADJUDGED, ORDERED and DECREED that the Demurrer filed on behalf of the Respondent, Real Estate Growth, Inc., be and it hereby is sustained with the said Respondent, Real Estate Growth, Inc., being hereby dismissed as a party to this suit.

ENTER:

/s/ Robert S. Wahab
Judge

I ask for this:

/s/ J. Hume Taylor, Jr.
Attorney for Real Estate Growth, Inc.

Seen and Exceptions Noted:

/s/ David K. Sutelan
Attorney for Seventeen, Inc.

V I R G I N I A :

IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

SEVENTEEN, INC., a Virginia corporation, Complainant,	:	
vs.	:	
CITY OF CHESAPEAKE, a Municipal corporation,	:	IN CHANCERY NO. 13849
PILOT LIFE INSURANCE COMPANY, a North Carolina corporation,	:	
and	:	
DOUGLAS B. FUGATE, Virginia State Highway Commissioner,	:	
Respondents.	:	

DEMURRER

The respondent, Pilot Life Insurance Company, for its Demurrer to the Amended Bill for Injunction exhibited against it states that:

1. There is no equity in the Bill as to the said respondent and the Bill for Injunction states no proper complaint, and further the Bill for Injunction is not sufficient in law, especially in the particulars set out below.

2. The complainant has an adequate remedy at law if, as alleged, there is, as stated by complainant, a "misuse" of the easement previously granted to the Commonwealth of Virginia by complainant's predecessor in title.

3. The complainant in its Amended Bill recites (through the incorporation of Exhibit "A") that its predecessor in title granted to the Commonwealth of Virginia "such drainage facilities

as may be necessary," without further limitation, and in its Amended Bill there is no allegation that any more than "such drainage facilities as may be necessary" are in fact being utilized.

4. The complainant in its Amended Bill recites that the plans for drainage of this repondent's lands were submitted to the City of Chesapeake through its Department of Public Works, and the respondent, City of Chesapeake, did approve said plans in accordance with applicable law. There is no allegation that this respondent violated any law or other legal requirement with respect to said plans approved by the respondent, City of Chesapeake. Complainant's remedy, if any, lies against the City of Chesapeake.

5. Complainant's Amended Bill is insufficient in that this respondent did not have and does not now have any control over the drainage from the property, the control and plans for such drainage being solely within the jurisdiction of the respondents, City of Chesapeake and Douglas B. Fugate, Commissioner for the Commonwealth of Virginia.

6. Complainant's Amended Bill is insufficient in that there is no allegation in said Amended Bill that this respondent has done anything with reference to the drainage except what it was directed to do by the City of Chesapeake and the Virginia State Highway Commission.

7. Complainant's allegation in paragraph 10 of its Amended Bill that this respondent did violate its "rights" without specific recitation of what the rights consist is vague,

uncertain and imprecise.

8. Complainant's Prayer prays that respondents be enjoined and restrained from "diverting" into the said drainage ditch more than "the amount of water originally contemplated at the time the said easement was granted, or acting in any way or manner so as to increase the burden or servitude upon the lands of the complainant," which Prayer is vague, uncertain and imprecise.

And having stated its Demurrer, this respondent prays that the Bill for Injunction exhibited against it may be dismissed and that it may have its costs in this matter expended.

PILOT LIFE INSURANCE COMPANY

By _____
Of Counsel

J. Hume Taylor, Jr.
Cocke and Taylor
101 Royster Building
Norfolk, Virginia 23510

I hereby certify that copies of this above plea were mailed this 16th day of December, 1971, to David Sutelan, Breeden, Howard & MacMillan, 1530 Virginia National Bank Building, Norfolk, Virginia, Attorney for the Complainant, and to William L. Forbes, City Attorney for the City of Chesapeake, Chesapeake Professional Building, Chesapeake, Virginia, and to Thomas W. Blue, Assistant Attorney General, 1101 East Broad Street, Richmond, Virginia, Attorney for Douglas B. Fugate.

_____
J. Hume Taylor, Jr.

January 28, 1972

Thomas W. Blue, Esquire
Assistant Attorney General
1401 Broad Street
Richmond, Virginia 23219

William L. Forbes, Esquire
City Attorney for the City of
Chesapeake
101 Mt. Pleasant Road
Chesapeake, Virginia 23320

J. Rume Taylor, Esquire
Cocke & Taylor
101 Royster Building
Norfolk, Virginia 23510

Re: Seventeen, Inc. v. City of Chesapeake, et al
In Chancery No. 13849 - Circuit Court, Chesapeake

Gentlemen:

On the morning of Friday, January 28, 1972, I contacted Judge Wilkinson in regard to his sustaining of your various Demurrers and Motions to Dismiss which were heard in oral argument on Thursday, January 27. The substance of our conversation was to the effect that we were requesting additional time prior to the entry of Orders for the express purpose of submitting written briefs containing authorities on our various points and the points upon which the Court relied.

Judge Wilkinson consented to our ex parte request and indicated that he would carry the file with him to Richmond and would enter no order until all memorandums had been furnished him. He has given us fourteen days in which to furnish him with our memorandum and list of authorities and has extended to all other counsel an equal amount of time in which to respond.

Very truly yours,

BREEDEN, HOWARD & MACMILLAN

By
David K. Sutelan

DKS:atm

cc: The Honorable James B. Wilkinson
Judge, Hustings Court for the
City of Richmond
City Hall
Richmond, Virginia

FIRST JUDICIAL CIRCUIT
OF VIRGINIA

WILLIAM H. HODGES, JUDGE
CHESAPEAKE, VIRGINIA

CITY OF CHESAPEAKE, VIRGINIA

June 2, 1972

Mr. Thomas W. Blue
Assistant Attorney General
Supreme Court Building
1101 East Broad Street
Richmond, Virginia, 23219

Mr. David K. Sutelan, Attorney
Breeden, Howard and MacMillan, Attorneys
One Commercial Place
Norfolk, Virginia, 23510

Mr. J. Hume Taylor, Attorney
Cocke and Taylor, Attorneys
101 Royster Building
Norfolk, Virginia, 23510

Mr. William L. Forbes, Attorney
101 Mt. Pleasant Road
Chesapeake, Virginia, 23320

Re: Seventeen, Inc. v. City of Chesapeake, et al
In Chancery No. 13849 - Circuit Court, Chesapeake

Gentlemen:

The Court thanks you for the written memorandum in the above case.

I am still of the same opinion that the motion to dismiss should be granted and accordingly, an order should be presented, endorsed by all counsel and mailed to me in Richmond in care of the Hustings Court, City Hall.

The Court expresses its thanks for your cooperation.

Very truly yours,

James B. Wilkinson
Judge

JBW/mlk

June 12, 1972

The Honorable James B. Wilkinson, Judge
Hustings Court of the City of Richmond
City Hall Building
Richmond, Virginia 23219

Re: Seventeen, Inc. v. City of Chesapeake, et al
In Chancery No. 13849 - Circuit Court, Chesapeake

Dear Judge Wilkinson:

We have and acknowledge receipt of your very brief decision of June 2, 1972 in the above captioned matter.

I have now had an opportunity to review the status of this case with the principal attorney for Seventeen, Inc., Senator Edward L. Breeden, Jr. of our office, and he has requested that I direct this correspondence to you requesting your opinion as to the particular grounds upon which you relied in sustaining the various motions to dismiss filed by all of the parties defendant. Specifically, we would appreciate your opinion regarding your grounds for vacating the previous ruling of Judge Wahab which overruled the motions to dismiss of the defendants on the merits but merely allowed the plaintiff leave to substitute certain parties, as well as the particular grounds alleged under the motion to dismiss which you relied upon in the rendition of this decision.

As we indicated to you upon oral argument on the various motions in January it was our desire if your oral ruling was maintained to present this matter at a later time to the Supreme Court of Virginia for review it would certainly make matters clearer and the points more definite if the opinion of the trial judge was available in order to assist the appellate court, if it chooses to review this matter, in its determination of the ultimate issues. It also appears from your brief decision that you are not granting complainant leave to amend the Bill of Complaint but are requesting that the parties consent to the entry of a final order of judgment which would have the effect of dismissing this case from the docket.

I am forwarding a copy of this correspondence to all counsel of record as well as to the new trial judge in the Circuit Court of the City

of Chesapeake in order that all parties as well as the Court may be apprised of our request for this opinion.

Very truly yours,

[illegible]EN, HOWARD & MACMILLAN

By

David K. Sutelan

DKS:dfd

cc: Mr. Thomas W. Blue
Assistant Attorney General
Supreme Court Building
1101 East Broad Street
Richmond, Virginia 23219

Mr. J. Hume Taylor
Attorney at Law
Cocke and Taylor
101 Royster Building
Norfolk, Virginia 23510

Mr. William L. Forbes
Attorney at Law
101 Mt. Pleasant Road
Chesapeake, Virginia 23320

The Honorable William H. Hodges, Judge
Circuit Court of the City of Chesapeake
Civic Center
Chesapeake, Virginia 23320

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE
on the 7th day of February, 1973.

SEVENTEEN, INC., a Virginia corporation,	:	
Complainant,	:	IN CHANCERY NO. 13,849
v.	:	
CITY OF CHESAPEAKE, et als,	:	
Respondents.	:	

O R D E R

The parties hereto having appeared previously by counsel on January 27, 1972, and argued (1) the Motion to Dismiss filed by Respondent, Douglas B. Fugate, Virginia State Highway Commissioner; (2) the Motion to Dismiss filed by Respondent, City of Chesapeake; and (3) the Demurrer filed by Respondent, Pilot Life Insurance Company, which Demurrer was amended at argument at the Court's suggestion, to a Motion to Dismiss and the parties having submitted Memoranda, all of which has been duly considered by the Court, it is

ADJUDGED, ORDERED and DECREED that the three Motions to Dismiss (including the Demurrer amended to a Motion to Dismiss) be sustained and that the amended Bill for Injunction be, and the same is hereby dismissed as to all three Respondents, to all of which action of the Court the Complainant, Seventeen, Inc., objects and excepts, the same being noted by the Court, and in particular, the Complainant notes the following specific objections and exceptions:

1) That the action of Judge Wilkinson in sustaining the Motions to Dismiss and/or Demurrers of all the Respondents is contrary to the law and the evidence.

2) That Judge Wilkinson erred in overruling Judge Wahab, the latter having overruled the Motion to Dismiss previously filed by the State Highway Commission to the Bill for Injunction on the identical specific grounds [save paragraphs three (a) through (c)] and sustaining the Motion to Dismiss of Douglas B. Fugate, State Highway Commissioner, a substituted party respondent.

3) That Judge Wilkinson erred in overruling and disregarding the law of the case as previously established by Judge Wahab in a previous hearing on the identical issues raised before Judge Wilkinson.

4) That Judge Wilkinson erred in permitting the Respondent, City of Chesapeake, permission to file and argue a Motion to Dismiss the amended Bill for Injunction after said Respondent had previously filed Answers and Grounds of Defense, to the original Bill for Injunction.

5) That Judge Wilkinson erred in failing, upon request of Complainant after submission of Briefs and Memoranda, by all parties, to render an opinion stating the particular grounds upon which he relied in sustaining the Motions to Dismiss filed by all parties respondent.

6) That Judge Wilkinson erred in sustaining the Motions to Dismiss filed by all parties respondent without granting leave to the Complainant to file an Amended Bill for Injunction.

7) That Judge Wilkinson erred in sustaining the Motions to Dismiss filed by all respondents and dismissing the Amended Bill for Injunction filed by Complainant.

ENTER:

_____

Judge

PICKS
HOWARD
MILLAN

We ask for this:

Attorney for City of Chesapeake

Attorney for Pilot Life Insurance Company

Attorney for Douglas B. Fugate, etc.

Seen and Exceptions Noted:

Attorney for Seventeen, Inc.

TICES
HOWARD
MILLAN

A COPY, TESTE: CHARLES B. CROSS, JR., CLERK

BY L. M. Hart D. C.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

SEVENTEEN, INC., a Virginia Corporation,	:	
Complainant,	:	
v.	:	
CITY OF CHESAPEAKE, a Municipal Corporation	:	IN CHANCERY NO. 13,849
PILOT LIFE INSURANCE COMPANY, a North Carolina Corporation	:	
and	:	
DOUGLAS B. FUGATE, Virginia State Highway Commissioner,	:	
Respondents.	:	

NOTICE OF APPEAL AND
ASSIGNMENTS OF ERROR

Now comes the Complainant, Seventeen, Inc., a Virginia Corporation, by counsel, and pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia, files herewith its Notice of Appeal from the Order of this Court entered on February 7, 1973, which Order sustained the Respondents' Motions to Dismiss the Complainant's Amended Bill for Injunction in behalf of the Respondents.

ASSIGNMENTS OF ERROR

Complainant, Seventeen, Inc., makes the following assignments of error:

1. That the action of Judge Wilkinson in sustaining the Motions to Dismiss and/or Demurrers of all the Respondents is contrary to the law and the evidence.

2. That Judge Wilkinson erred in overruling Judge Wahab, the latter having overruled the Motion to Dismiss previously filed by the State Highway Commission to the Bill for Injunction on the identical specific grounds [save paragraphs three (a) through (c)] and sustaining the Motion to Dismiss of Douglas B. Fugate, State Highway Commissioner, a substituted party respondent.

3. That Judge Wilkinson erred in overruling and disregarding the law of the case as previously established by Judge Wahab in a previous hearing on the identical issues raised before Judge Wilkinson.

4. That Judge Wilkinson erred in permitting the Respondent, City of Chesapeake, permission to file and argue a Motion to Dismiss the Amended Bill for Injunction after said Respondent had previously filed Answers and Grounds of Defense, to the original Bill for Injunction.

5. That Judge Wilkinson erred in failing, upon request of Complainant after submission of Briefs and Memoranda, by all parties, to render an opinion stating the particular grounds upon which he relied in sustaining the Motions to Dismiss filed by all parties respondent.

6. That Judge Wilkinson erred in sustaining the Motions to Dismiss filed by all parties respondent without granting leave to the Complainant to file an Amended Bill for Injunction.

7. That Judge Wilkinson erred in sustaining the Motions to Dismiss filed by all respondents and dismissing the Amended Bill for Injunction filed by Complainant.

The Complainant, Seventeen, Inc., pursuant to Rule 5:9 of the Rules of Court of the Supreme Court of Virginia, will neither file a transcript nor a written statement of facts, testimony or other incidents of the case as no

evidence, testimony or exhibits were ever presented or offered before the Court, the matter being heard and determined entirely from the Amended Bill for Injunction and the various Motions to Dismiss and/or Demurrers filed by the respective Respondents.

SEVENTEEN, INC., a Virginia Corporation

By /s/ David K. Sutelan
Of Counsel

David K. Sutelan, p.q.
William C. Walker, p.q.
Breeden, Howard & MacMillan
1530 Virginia National Bank Bldg.
Norfolk, Virginia 23510

I certify that on the 26th day of February, 1973, the original of the foregoing Notice of Appeal and Assignments of Error was mailed to the Clerk of the Circuit Court of the City of Chesapeake and a true copy thereof was delivered by mailing the same to J. Hume Taylor, Jr., Esq., Cocke and Taylor, 101 Royster Building, Norfolk, Virginia, 23510, counsel for Pilot Life Insurance Company; Ronald S. Hallman, Esq., Assistant City Attorney, Office of the City Attorney, 101 Mt. Pleasant Road, Chesapeake, Virginia, 23320, counsel for the City of Chesapeake and Thomas W. Blue, Esq. Assistant Attorney General, Supreme Court Building, 1101 East Broad Street, Richmond, Virginia, 23219, counsel for Douglas B. Fugate, Virginia State Highway Commissioner.

/s/ David K. Sutelan
David K. Sutelan