

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

STATE OF OHIO EX REL.)	CASE NO. 04CV001080
ROBERT MERRILL, TRUSTEE, <i>et al.</i> ,)	
)	JUDGE EUGENE A. LUCCI
Plaintiffs-Relators,)	
)	
vs.)	
)	
STATE OF OHIO, DEPARTMENT OF)	
NATURAL RESOURCES, <i>et al.</i> ,)	PLAINTIFF OLG’S RESPONSE TO
)	THE STATE OF OHIO’S MOTION TO
Defendants-Respondents.)	STAY OLG’S MOTION FOR FEES

Plaintiff Ohio Lakefront Group, Inc. (“OLG” or “Plaintiff”) hereby responds to the motion by Defendant State of Ohio (“State of Ohio” or “State”) to stay (“Motion to Stay”) OLG’s recently filed motion for fees (“Motion for Fees”). OLG concedes that the Court has the discretion to stay consideration of OLG’s Motion for Fees as suggested by both the Ohio Department of Natural Resources (“ODNR”) and the State of Ohio in their separately-filed motions. Although OLG’s filing on January 10th was necessary to satisfy the thirty-day filing requirement contained in R.C. 2335.39, OLG agrees that the parties should avoid unnecessary duplication of costs. Nevertheless, OLG takes issue with the false assertions made by the State in its Motion to Stay.

To support its argument for a stay, the State erroneously states that a similar stay occurred in a case cited by OLG in its Motion for Fees - *State ex rel. R.T.G., Inc. v. State*, 98 Ohio St. 3d 1 (2002). In *State ex rel. R.T.G.*, the Tenth District Court of Appeals (the court in which the action was originally filed) first ruled in favor of the relator on the merits by issuing a writ of mandamus against ODNR based on ODNR’s unconstitutional taking of the relator’s property and then heard and subsequently decided the relator’s motion for fees. *See State ex rel. R.T.G.*, 98 Ohio St. 3d at 5 (“On April 9, 2001, RTG moved the appellate court for an award of attorney fees and costs with regard to the mandamus action. The appellate court denied the motions.”) ODNR appealed the granting of the writ, and the relator the denial of its motion for fees, to the Ohio Supreme Court, resulting in the consolidated opinion cited by OLG in which the

Ohio Supreme Court decided that ODNR's position was not substantially justified. The Tenth District did not, as the State claims, "stay any determination of the R.T.G., Inc. Plaintiffs' Motion for Attorneys Fees during the time in which the appeal of its decision was before the Ohio Supreme Court." (State's Stay Motion at p. 4, n. 1.)

The State's claim is troublesome for a number of reasons. First, it is clearly contradicted by the facts noted in the Supreme Court's opinion. *See State ex rel. R.T.G.*, 98 Ohio St. 3d at 5. Second, the rules of procedure compel that (except for matters of original jurisdiction of which this is not one) an issue heard by the Ohio Supreme Court must have been decided previously by a lower court. Third, Mr. Bartley, one of the Assistant Attorneys General signing the State's Motion to Stay, was counsel to ODNR in the *State ex rel. R.T.G.* dispute and must know the facts to be otherwise than as represented in the State's motion.

Thus, Plaintiff OLG does not object to the Court staying its Motion for Fees, only to the misrepresentations made by the State of Ohio in pursuit of such a stay.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing **PLAINTIFF OLG'S RESPONSE TO THE STATE OF OHIO'S MOTION TO STAY OLG'S MOTION FOR FEES** was served, via e-mail and regular U.S. Mail, upon the following, this 30th day of January, 2008:

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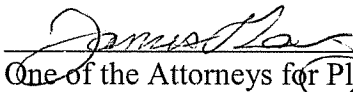
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