

In the
Supreme Court of Ohio

State of Ohio ex rel. Dave Yost, Ohio Attorney General,	:	Case No. _____
	:	
Plaintiff-Appellant,	:	On appeal from the Franklin County Court of Appeals, Tenth Appellate District
v.	:	
	:	Court of Appeals
FirstEnergy Corp., et al.,	:	Case Nos. 21AP-443, 21AP-444, 21-AP445
Defendants,	:	
	:	
(Samuel C. Randazzo and Sustainability Funding Alliance of Ohio, Inc.,	:	
Defendants-Appellees).	:	

**MOTION FOR STAY PENDING APPEAL
PURSUANT TO OHIO SUPREME COURT RULE 7.01**

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MOTION FOR STAY PENDING APPEAL

Plaintiff-Appellant State of Ohio, *ex rel.*, Attorney General Dave Yost (“State”) respectfully moves this Court, pursuant to Ohio Supreme Court Rule 7.01(a)(3)(a), for a stay of execution of the judgment mandate issued by the Tenth District’s Judgment Entry filed September 30, 2022, reversing and remanding three trial court orders relating to a prejudgment attachment the State obtained in the trial court against assets of Defendant-Appellant Sam Randazzo. The Tenth District denied, on October 17, a timely filed motion to stay its mandate, thereby necessitating this motion. See, Attached Exhibit A. This Court should stay the Tenth District’s mandate to preserve the status quo so that This Court can decide whether to assert jurisdiction over this case.

This case is of obvious public, and great general, interest. *Ex parte* attachment statutes are an essential tool in fighting corruption and fraud. If the decision below is permitted to stand, it will be difficult to obtain *ex parte* attachments, which are an important tool in fighting public corruption, at all. And, this case also presents important questions regarding prejudgment attachments, which, because of their nature, this Court rarely has the opportunity to review.

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MEMORANDUM IN SUPPORT

This case presents issues of great legal, practical, and public significance. It arises from a brazen conspiracy perpetrated by an energy conglomerate, FirstEnergy Corp., to defraud Ohioans out of billions of dollars. As part of its scheme to enact legislation and regulatory rules that would bailout its nuclear power plants and secure an inflated guaranteed income stream for its distribution companies, FirstEnergy admitted to paying a bribe to Defendant-Appellant Samuel C. Randazzo as a public official through his company, Defendant-Appellant Sustainability Funding Alliance of Ohio, Inc. for favorable regulated treatment by Randazzo as Chair of the Public Utilities Commission of Ohio. App.Op. ¶3; R. 336, Motion to Amend. After the FBI raided Randazzo's home and Randazzo had resigned from the PUCO, Randazzo began to liquidate and transfer assets to protect the proceeds of his criminal conduct from the potential civil suits that would inevitably follow the federal criminal indictment of FirstEnergy and its coconspirators.

A little over a year ago the State moved for leave to amend its complaint to name Randazzo and SFAO, when public information became available that FirstEnergy admitted in a deferred prosecution agreement to bribing Randazzo. In addition to obtaining leave to amend, the State also sought, and was granted, orders of attachment and garnishment of certain property which are the subject of the appeal herein. Specifically, the trial court granted the State's *Ex-Parte* Motion for Prejudgment

Attachment of Property Other than Personal Earnings and the State's *Ex-Parte* Motion for Prejudgment Attachment of Accounts of Property Other than Personal Earnings. App.Op. ¶3. After an evidentiary hearing, Randazzo and SFAO moved to vacate the trial court's attachment order, which was subsequently denied. App.Op. ¶3.

On appeal, the Tenth District Court of Appeals reversed and vacated the orders of attachment and garnishment. The Court rejected three of the four procedural grounds for reversal raised by Randazzo and SFAO. App.Op. ¶¶17, 21, 22. But, it sustained Randazzo's fourth ground: that the trial court abused its discretion in finding the requisite "irreparable injury" and thus the attachment order should not have issued *ex parte*. App.Op. ¶¶23–34. The court of appeals thought that giving away a \$500,000 home, and liquidating millions of dollars of other real estate, while being implicated in major public corruption, was insufficient grounds for an attachment.

As will be more fully detailed in the forthcoming jurisdictional memorandum, the State established multiple grounds to obtain this attachment. If the intermediate court's determination that the trial court abused its discretion under these is allowed to stand, then this case will be the death knell of *ex-parte*-prejudgment attachments in Ohio, allowing bad actors and criminals to move funds and assets while a motion is pending, and denying justice to victims.

The State sought a stay of execution the court's judgment under Ohio Appellate Rule 27, which was subsequently denied on October 17, 2022. See, Attached Exhibit A.

The State now moves this Court for a stay pending our seeking of a discretionary appeal. In deciding whether to grant such a stay, the Court traditionally looks to “whether the movant has demonstrated a likelihood of success on the merits and whether the movant will suffer irreparable harm absent a stay” as well as whether “the interests of the other parties to the litigation and the public.” *Davis v. McGuffey*, 167 Ohio St. 3d 1442, 1443 ¶3 (Kennedy, J., dissenting); see *TGR Enters., Inc. v. Kozhev*, 2d Dist. Montgomery No. 20958, 167 Ohio App. 3d 29, 32 (2006); *Cardiovascular Assocs., LLC*, 1st Dist. Hamilton No. C-200072, 2020-Ohio-6865, ¶16.

The State is clearly likely to succeed on the merits. FirstEnergy admitted to paying a \$4.3 million bribe to Randazzo and SFAO in the deferred prosecution agreement that it entered into in conjunction with the federal criminal indictment. And Randazzo does not dispute the sales and transfers that are the subject of the orders at issue in this suit.

Most importantly, absent a stay, the State and the public will be irreparably harmed. Absent a stay, it is unlikely that the State can ultimately collect on the civil penalties Randazzo would owe the State. Randazzo has shed assets and otherwise placed them beyond the State’s reach since he first became aware of the inevitable lawsuits he would face arising from his part in the conspiracy with FirstEnergy. In February 2021, Randazzo gifted a house to his son, which has an estimated value over \$500,000. And from February through May 2021, he sold four properties totaling over \$4.8 million turning them into liquid assets that can be moved instantly across the world with a press

of a button. He has transferred certain property to a trust in his wife's name. App.Op. ¶27. And the State later learned, after the *ex parte* orders had been entered but before the evidentiary hearing, that Randazzo had transferred an additional \$3 million to two law firms, one with no presence in Ohio, just two days before the State had sought orders of attachment. Supp. Aff. ¶¶3–5.¹ Notably, that money was not paid to the firms for work already performed. *Id.* ¶4. Rather, it was placed into trusts for Randazzo's benefit. The sums already transferred are enormous. Should the orders of attachment and garnishment be lifted, Randazzo will no doubt continue to transfer property (rightfully owed to Ohioans for his part in the conspiracy) beyond the reach of the State and outside the jurisdiction of this Court.

Finally, the public interest weighs in favor of entering a stay pending appeal. Attachment is an essential tool in fighting corruption and fraud. FirstEnergy and every one of its co-conspirators, including Randazzo, conducted an unprecedented fraudulent scheme that affected every Ohioan. The State has sought to attach Randazzo's property to secure the proceeds of, and to exact penalties for, the public corruption and fraud. And Randazzo has shown that he is willing to transfer, conceal, and dispose property (rightfully owed to the public) in order to avoid paying for his corruption. And at every turn, the State has sought to prevent this from happening. If this Court denies a stay of

¹ The Court of Appeals erroneously refused to consider evidence submitted at the objection hearing in its decision.

the lower court's judgment, Randazzo can resume his sales and transfers. As a result, the public will be further harmed because Randazzo may never be brought to justice. It is also of great public interest that Randazzo's assets be preserved to compensate the public for the harm caused by his accepting of a \$4.3 million bribe.

Should a stay not be granted, this Court may lose its ability to review the decision below.

For the aforementioned reasons, the State requests an immediate stay of the court of appeals' judgment pursuant to Ohio Supreme Court Rule 7.01(A)(3)(a).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion for Stay Pending Appeal was served by e-mail this 18th day of October, 2022, upon the following counsel:

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IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

EXHIBIT A

State of Ohio ex rel. Dave Yost, :  
Ohio Attorney General, :

Plaintiff-Appellee, :

v. :

FirstEnergy Corp. et al., :

Defendants-Appellees, :

(Samuel C. Randazzo and Sustainability :  
Funding Alliance of Ohio, Inc., :

Defendants-Appellants). :

City of Cincinnati and City of Columbus, :

Plaintiffs-Appellees, :

v. :

FirstEnergy Corp. et al., :

Defendants-Appellees, :

(Samuel C. Randazzo and Sustainability :  
Funding Alliance of Ohio, Inc., :

Defendants-Appellants). :

State of Ohio ex rel. Dave Yost, :  
Ohio Attorney General, :

Plaintiff-Appellee, :

v. :

Energy Harbor Corp. et al., :

Defendants-Appellees, :

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Funding Alliance of Ohio, Inc., :

Defendants-Appellants). :

No. 21AP-443

(ACCELERATED CALENDAR)

No. 21AP-444

(ACCELERATED CALENDAR)

No. 21AP-445

(ACCELERATED CALENDAR)

JOURNAL ENTRY

Appellee – state of Ohio’s October 4, 2022 motion to stay this court's September 30, 2022 judgment pending appellee’s further discretionary appeal to the Supreme Court of Ohio is denied.

  
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Judge Laurel Beatty Blunt

  
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Judge William A. Klatt

  
\_\_\_\_\_  
Judge Michael C. Mentel

AC

cc: Clerk, Court of Appeals  
Deputy Court Administrator  
Court Assignment Commissioner



Court Disposition

Case Number: 21AP000443

Case Style: STATE OF OHIO EX REL DAVE YOST -VS-  
FIRSTENERGY CORP

Motion Tie Off Information:

1. Motion CMS Document Id: 21AP0004432022-10-0499640000  
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