CASE NO. 3D2025-0154

In the District Court of Appeal
Third District of Florida

CITY OF MIAMI BEACH,

Appellant,

v.

CLEVELANDER OCEAN, LP, a Delaware limited partnership; CLEVELANDER HOLDINGS, LP, a Delaware limited partnership; ESSEX HOUSE COLLINS, LP, a Delaware limited partnership, and MIAMI-DADE COUNTY,

Appellees.

ON REVIEW FROM A NON-FINAL ORDER OF THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA
L.T. CASE NO. 2021-11642-CA-22

CITY OF MIAMI BEACH'S *EMERGENCY* MOTION TO REINSTATE AUTOMATIC STAY

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Pursuant to Florida Rule of Appellate Procedure 9.310(f), Appellant, City of Miami Beach ("City"), seeks emergency review of the trial court's order (A. 5-9) vacating the City's automatic stay pursuant to Rule 9.310(b)(2), which took effect on January 24, 2025, when the City appealed the trial court's mandatory injunction order of January 14, 2025 ("Injunction Order").[1] A. 10-35.

BASIS FOR EMERGENCY RELIEF

Rejecting established law that a Rule 9.310(b)(2) automatic stay should be vacated only when the party seeking to vacate makes an *evidentiary* showing of "*compelling circumstances*," the trial court, on February 6, 2025, vacated the automatic stay, placing the City in the perilous position of facing sanctions for failing to reopen a road by January 31, 2025 and potentially wasting hundreds of thousands of taxpayer dollars if the injunction is ultimately reversed or the City obtains a permit from Miami-Dade County. At the hearing, the following colloquy took place:

> MR. GUEDES: So Your Honor, for purposes of -- for purposes of the appellate record.
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> THE COURT: Yes, sir.

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[1] In an abundance of caution, the City in its response in opposition to the motion to vacate the automatic stay also moved to stay the effect of the Injunction Order. The vacatur order denied relief.

> MR. GUEDES: What are the compelling circumstances that the Clevelander has established through evidence warranting the vacating of the stay?
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> THE COURT: Well, I don't feel that under these circumstances and under the rules of the Third DCA, those are the factors that I need to apply. I think the factors that need to apply are the likelihood of success and the irreparable harm.
>
> MR. GUEDES: What is the Third DCA case, Your Honor, that you're referring to? I'm afraid -- because they certainly didn't cite, they didn't cite to one --
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> THE COURT: I'm saying that the ones that you cited are not Third DCA cases.
>
> MR. GUEDES: I understand. But what is the Third DCA rule --
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> THE COURT: Show me a Third DCA – you show me a Third DCA case that says I have to have an evidentiary hearing, because then I will look at that case.

The trial court, then, based its decision solely upon its prior decision to grant the injunction.

Absent emergency relief, the City is in peril of being held in contempt of the Injunction Order, which resulted from a January 8, 2025 hearing on the motion for partial summary judgment filed by plaintiffs/appellees Clevelander Ocean, LP (the operator of the Clevelander Hotel) and Clevelander Holdings, LP (the owner of the Clevelander Hotel) (together, the "Clevelander Parties" or for

purposes of this motion only, "Appellees"[2]) as to two claims relating to the traffic configuration of Ocean Drive. The trial court ordered the City to restore Ocean Drive to some unspecified status that existed prior to the COVID-19 pandemic: "[T]he City must restore all of Ocean Drive to its pre-COVID-19 traffic flow and configuration, remove all illegal barriers and modifications, and allow the flow of traffic in both directions to resume on or before 5 p.m. on January 15, 2025." A. 33-34. On the City's motion, granted in part, the trial court extended compliance to *January 31*, 2025.

Although the City had begun the process of compliance, including by obtaining contractor proposals (A. 93-94) and coordinating with the County to obtain the necessary authorizations, permits and approvals, the City appealed the Injunction Order on January 24, 2025, thereby automatically staying its effect.[3] Fla. R. App. P. 9.310(b)(2). Appellees moved to vacate the automatic stay, A. 95-104, which the City opposed.

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[2] The County is named as an appellee only because it is a co-defendant below. The injunctive relief granted was not requested by the County, nor does the order directly impose any obligations on the County.

[3] It is undisputed in these proceedings that the County, has exclusive jurisdiction over traffic flow on roads located within the County, including Ocean Drive. A. 13-14 (¶ 27).

On February 5, 2025, the trial court heard legal argument (but no witness testimony and admitted no evidence) on the motion to vacate and granted the motion, vacating the stay *after* the January 31, 2025 deadline for compliance with the Injunction Order had expired, thereby leaving the City in a status of non-compliance with the Injunction Order.[4] If the automatic stay is not reinstated, the City fears that Appellees may move to impose sanctions for non-compliance before the validity of the Injunction Order has even been considered by this Court, and the City could be forced to waste hundreds of thousands of taxpayer dollars should Ocean Drive have to be restored to the current one-way southbound traffic configuration (as a result of either an appellate reversal or the issuance of a County permit to allow the current one-way configuration, for which the City had a conditional permit and for which the City has already re-applied at the County's invitation).[5]

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[4] The City has contended since the January 8, 2025 injunction hearing that it would take considerably longer than the allotted time to achieve compliance with the trial court's directives and that premature reconfiguration of Ocean Drive would result in a waste of hundreds of thousands of taxpayer dollars should Ocean Drive have to be restored to the current one-way southbound traffic configuration. A. 213-17.

[5] The City, on February 4, 2025, moved this Court to expedite this appeal, which this Court denied without prejudice. Subsequent to the trial court's vacatur of the automatic stay, Appellees' counsel

(continued . . .)

The City respectfully contends that the trial court committed clear legal error and abused its discretion in vacating the automatic stay, and this Court should quash the order and reinstate the stay.

SUMMARY OF ARGUMENT

The automatic stay was meant to protect the public from any repercussions that might result from an erroneous injunction. Ignoring this concern, Appellees asked the trial court to vacate the automatic stay without providing an evidentiary basis to do so. The trial court specifically asked Appellees whether they had any witnesses or evidence to present in support of their motion to vacate, and Appellees elected to rely on the trial court's findings in support of the Injunction Order. In fact, Appellees failed to carry their heavy *evidentiary* burden to demonstrate that circumstances are so "compelling"—so "overwhelmingly tilted" in favor of vacatur—that the automatic stay should be lifted despite (i) there having been no change in Ocean Drive for the past three years that could have created some new safety concerns, (ii) competing safety concerns for the public that have been using the northbound pedestrian and cycling lanes on Ocean Drive for years, and (iii) judicial deference to

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(. . . continued)
informed undersigned counsel that Appellees ***opposed*** expediting the appeal. A. 257.

quintessential traffic planning functions everyone acknowledges belong with the County.

Appellees failed to provide evidence of "compelling" circumstances to disrupt the status quo that has existed for the past three years, choosing instead to piggy-back only on the trial court's findings of irreparable harm in the Injunction Order. Under Florida law, that's not enough to demonstrate compelling circumstances warranting vacatur of the automatic stay.

Nor could Appellees point to any supporting evidence anyway, given that (i) the southbound lanes on Ocean Drive directly abutting the Clevelander Hotel have been open for the hotel to use *for the past three years*, and (ii) there is no evidence that during that time there had been a single instance of any guest, patron, employee, delivery or emergency service vehicle being unable to access the hotel. The trial court clearly erred by *refusing* to find "compelling circumstances" to support the vacatur, insisting it was enough for it to find the City was unlikely to prevail on appeal and there was irreparable harm supporting the Injunction Order.[6] And it abused its discretion by vacating the stay when Appellees failed to meet

[6] "And the irreparable harm is articulated in my original order. So there's no likelihood of success on appeal, in other words." A. 75.

their evidentiary burden of establishing "compelling circumstances" that "overwhelmingly tilted" in favor of vacatur.[7]

FACTUAL BACKGROUND

A. While Ocean Drive had been closed entirely to vehicular traffic in May 2020, the City re-opened the southbound lanes to vehicular traffic in January 2022—both of which have remained open since then.

In May 2020, following the onset of the COVID-19 pandemic, the City, with authorization from the County, closed the northbound and southbound lanes of Ocean Drive to vehicular traffic. A. 14 (¶¶ 28–32). While the original road closures remained in effect, Appellee Clevelander Ocean LP ("Clevelander Operator") (then the sole plaintiff in the case) filed the original complaint in May 2021. A. 11, 14 (¶¶ 1, 34). In Count I, Clevelander Operator sought an order enjoining the City from closing Ocean Drive to vehicular traffic. A. 11 (¶ 2).

Clevelander Operator based its request on the theory that the closure of Ocean Drive to vehicular traffic "significantly impair[ed] access to the Clevelander and eliminat[ed] vehicular ingress and

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[7] Here, too, the trial court based its equities balancing using its injunction findings, though it acknowledged that Ocean Drive's status had existed for "nearly three years." A. 6 (¶ 5).

egress to the [Clevelander's] main entrance." A. 266 (¶ 34).[8] On June 6, 2021, when the trial court first considered whether to grant injunctive relief to Clevelander Operator in connection with the ***fully closed*** Ocean Drive, it denied relief stating with respect to access, "*I don't think that's interfering or preventing the use of the Clevelander, especially since I think that's [10th] Street, … there's access*." The trial court would later go on to explain: "I'm not going to change the road closure. I don't think I have the authority for the reasons that's stated in [the City's] papers and what we have been discussing, to close that road. However, you know, I caution [the City] that you are -- *if you are closing off 10th* because you need that for some sort of staging for I don't know what, for a legitimate reason, but now you're closing off two entrances to the hotel in that, *that could create a significant use problem for the hotel*." A. 534-537 (emphasis added).

Indeed, Appellees' counsel conceded the hotel access available on 10th Street would suffice: "Your Honor, all we would like is to be able to go to the intersection of Ocean and 10th and have like a cul-de-sac with our valet attendant, which is what all the other streets up and down have." A. 535-36.

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[8] On its east end, the Clevelander Hotel, located at 1020 Ocean Drive in Miami Beach, abuts the westerly southbound lanes on Ocean Drive. A. 639 (¶ 6).

Nonetheless, on January 24, 2022, the City re-opened both southbound lanes of Ocean Drive to vehicular traffic: the westernmost southbound lane was reopened for valet and parking services (in addition to vehicular traffic), and the second-most westbound lane was reopened for southbound vehicular traffic. A. 16-17 (¶ 41). Since then, the southbound lanes of Ocean Drive have remained open to vehicular traffic and for valet and parking services. A. 16-17, 17-18 (¶¶ 41, 47). If anything, the access conditions that existed on June 6, 2021, when the trial court denied preliminary injunctive relief, have only improved, providing hotel visitors with full access to the property.[9]

[9] In his January 27, 2025, deposition, Mr. O'Brien, who filed a declaration in this case and was the designated corporate representative, acknowledged that the flow of traffic on Ocean Drive was always congested, even before COVID. A. 673-74. He also acknowledged that, with the exception of going north on Ocean Drive and doing a U-turn in front of the hotel, all the ways of accessing the Clevelander Hotel that existed pre-COVID are still available now under the current traffic configuration. A. 675-76. In fact, Mr. O'Brien estimated that there were 50 routes that could be utilized to get to the Clevelander Hotel, and only the northbound approach is now unavailable, and he conceded that that route was not among the quicker routes. A. 667-74.

B. Appellees' alleged "harm" from the restriction of Ocean Drive traffic—an "impeded" ability to escort guests, employees, and deliveries in and out of the building—has only improved since the original road closure in May 2020.

In August 2024—over a year and a half after the City re-opened the southbound lanes of Ocean Drive to vehicular traffic—Appellees filed their second amended complaint, again requesting an injunction prohibiting the City from closing Ocean Drive to vehicular traffic. A. 12 (¶¶ 9–10). Appellees based the injunction requested in Count I on the *allegation* that the closure of Ocean Drive to vehicular traffic "limit[s] vehicular ingress and egress to the Clevelander's hotel lobby," which, allegedly, "severely curtail[s] the Clevelander's ability to welcome guests and discourage[s] potential guests who might otherwise patronize the Clevelander." A. 918, 919, 939 (¶¶ 77–82, 86, 227–29).

Appellees claimed that the closure of Ocean Drive to vehicular traffic "impeded" the Clevelander from conducting a "core function of its business: getting guests, patrons, employees, and deliveries into and out of the hotel and its entertainment areas with *speed and ease*." A. 618 (emphasis added). Notably, Appellees did not seek emergency relief after the City re-opened the southbound lanes of Ocean Drive to vehicular traffic in January 2022. To the contrary,

the Ocean Drive road closure issue was functionally not prosecuted for two-and-a-half years.

When the trial court entered a FWOP Notice in January 2023, Clevelander Operator filed, on March 9, 2023, a motion to stay the case to avoid dismissal. The trial court granted and then extended the stay for roughly 16 months before the Clevelander Operator unilaterally decided that the stay should be lifted in June 2024. Even after the other two Appellees were added to the case on August 27, 2024, Appellees did not renew their motion for temporary injunction.

In support of their motion for partial summary judgment, Appellees submitted the declaration of Mr. O'Brien. A. 638-42. According to him, the Clevelander Hotel "continue[s]" to be "harmed" by the one-way operation of Ocean Drive to vehicular traffic in place since January 2022 in the same way the Clevelander was "harmed" by the total closure of Ocean Drive in place from May 2020 through January 2022: due to the road closure, the Clevelander's ability to escort guests, employees, and deliveries in and out of the building has been "impeded." A. 640 (¶¶ 12, 16–18). The only difference is that now, following the reopening of the southbound lanes on Ocean Drive to vehicular traffic, there is a reduced "impediment" to Clevelander's ability to escort guests, employees, and deliveries in and out of the building: now, the

alleged "impediment" is only to "speed and ease" of access. A. 640 (¶ 16).

The trial court adopted that explanation wholesale, even though no one testified as to what "speed and ease" meant or even identified a *single* instance when a guest, patron, employee or delivery was precluded from reaching the hotel or even delayed in doing so.[10] A. 27-28 (¶ 73).

The day before the hearing on the motion for partial summary judgment, the County sent the City a letter stating that, while County staff had "significant concerns regarding traffic operations and safety arising from the [Ocean Drive] road closure," the County was still "encourag[ing] the City to pursue a parallel application for the existing one-way condition on Ocean Drive from 5th Street to

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[10] In deposition, Mr. O'Brien acknowledged that he is not a traffic expert and that his opinions regarding traffic flow had not been substantiated by any traffic studies. A. 678. Appellees have not hired an expert to examine the issue. A. 684. When asked to quantify any loss of business caused by the traffic configuration, he could not. A. 682. He acknowledged that deliveries, employees and guests were still able to get to the Clevelander Hotel, but that traffic congestion could slow things. A. 683. The closest Mr. O'Brien came to identifying specific consequences of the traffic configuration was his supposition (without data) that traffic congestion likely "deterred" visitors: "if it's going to take them an hour in traffic to get to Clevelander, they're *probably* going to choose another location.... Do we know if that's the reason? Only if they tell us." A. 688-89 (emphasis added).

14th Place as this concept was temporarily approved by [the County][.]" A. 1329.[11] The letter went on to state that the "existing one-way condition on Ocean Drive" had been "temporarily approved" "with conditions that [had not yet] been met to date including a post-implementation traffic analysis of the one-way operation."[12] *Id.*

In fact, the County representative whom Appellees deposed, Yamilet Senespleda, submitted a declaration post-deposition to clarify that the County's safety concerns regarding Ocean Drive were focused on the pedestrian plaza created between 13th Street and 14th Place, rather than the southbound, one-way configuration of Ocean Drive. A. 1331-32 (¶¶ 3-4).

Appellees introduced the County's letter at the hearing, which led the City to explain that the letter reflected that the County had at one point "approved" the current one-way condition of Ocean

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[11] The County's letter was not properly part of the summary judgment record given that it was filed and served the *day before* the partial summary judgment hearing.

[12] The area of Ocean Drive from 13th Street to 14th Place had been converted into a pedestrian plaza through which no vehicular traffic flowed. While the County's January 7, 2025 letter asks the City to remove safely any barriers that were creating this pedestrian area, it *also* encourages the City to pursue the one-way configuration of Ocean Drive *through* 14th Place. In short, the letter contemplates that even the area presently closed off to all vehicular traffic could be configured solely for southbound traffic.

Drive "with conditions that have not been met to date"—but which could be met moving forward. The referenced one-way condition is the current availability of the southbound lanes on Ocean Drive to vehicular traffic and the current use of the northbound lanes for pedestrian and cyclists. A. 179. The County's January 7th letter did *not* include a time frame for compliance. A. 1329.

The issue of a compliance date arose only after the trial court had orally ruled that it would grant summary judgment on Count I. A. 213. Appellees' request that the reopening occur by "tomorrow by the end of the day," A. 215, was at odds with the fact that it had been *more than three years* since the relevant portion of Ocean Drive had been open to two-way traffic.

In the Injunction Order, the trial court permanently enjoined the City from closing, "wholly or partially," Ocean Drive between 5th Street and 15th Street to vehicular traffic "absent an approved permit validly issued by Miami-Dade County." A. 33. The City noted below that a permanent County permit for the one-way southbound configuration is likely imminent once the City resubmits design plans with a new Engineer of Record (the original Engineer of Record is now the County Department of Transportation and Public Works Director). Meanwhile, converting Ocean Drive back to two-way traffic would cost between an estimated $128,100 (without milling and resurfacing the old asphalt) and $815,629.75 (including

milling and resurfacing the asphalt). A. 93-94. To then re-convert to one-way traffic following the issuance of a permit (and/or reversal of the Injunction Order on appeal) would cost even more taxpayer money.

ARGUMENT

I. STANDARD OF REVIEW.

Ordinarily, a trial court's decision with respect to vacating the government's automatic stay is reviewed for abuse of discretion. *DeSantis v. Fla. Educ. Ass'n*, 325 So. 3d 145 (Fla. 1st DCA 2020). However, the exercise of such discretion is circumscribed by the stringent standard for vacating automatic stays under Rule 9.130(b)(2). "A trial court abuses its discretion by vacating an automatic stay when the party seeking to vacate the stay does not make the necessary showing of compelling circumstances, when the government is likely to succeed on appeal, ***or*** when reinstatement of the stay is unlikely to cause irreparable harm." *DeSantis*, 325 So. 3d at 151 (emphasis added) (citing *Fla. Dep't of Health v. People United for Med. Marijuana*, 250 So. 3d 825, 828-29 (Fla. 1st DCA 2018)).[13] The First District's articulation of the compelling

[13] Below, Appellees cited *Mitchell v. State*, 911 So. 2d 1211 (Fla. 2005), which concluded an automatic stay *was* available to the State while appealing the dismissal of a petition to civilly commit an individual under the Involuntary Civil Commitment of Sexually (continued . . .)

circumstances test did not arise in a vacuum. *See Reform Party of Fla. v. Black*, 885 So. 2d 303, 306 n. 3 (Fla. 2004) ("[C]ourts have the discretion to vacate the automatic stay when compelling circumstances require.").

Indeed, any of the conditions enumerated in *DeSantis* is sufficient for this Court to conclude that the trial court abused its discretion. *Id.* (reversing the trial court's vacatur on three *independent* reasons: the absence of a showing of compelling circumstances, the government having a substantial likelihood of success on the merits, and the moving party's failure to show that reinstatement of the automatic stay would cause irreparable harm). Basing the vacatur of an automatic stay on the pre-existing findings

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Violent Predators Act. *See generally* 911 So. 2d at 1212–19. While it answered that question in the affirmative, the *Mitchell* Court did *not* go on to analyze the appellant's motion to vacate the stay, choosing instead to observe, "Ordinarily, there are two principal considerations that courts must take into account when deciding whether to vacate a stay: the likelihood of irreparable harm if the stay is not granted and the likelihood of success on the merits by the entity seeking to maintain the stay." *Id.* at 1219. The case it cited to, *Perez v. Perez*, 769 So. 2d 389, 391 n.4 (Fla. 3d DCA 1999), did *not* involve the automatic stay provision of Rule 9.310(b)(2). Ultimately, the *Mitchell* Court upheld the First District's decision, which agreed with the trial court in denying the motion to vacate the stay. *Id.* at 1213, 1219–20.

of irreparable harm supporting the injunction is insufficient.[14] *Id.* ("Based 'on the reasons stated in the order of August 24, 2020 granting motion for temporary injunction,' the circuit court found, without further explanation, that 'there exists a clear evidentiary basis demonstrating compelling circumstances to warrant vacating the automatic stay.' We disagree.").[15]

If the irreparable harm found to support an injunction were sufficient to support the vacatur of the automatic stay, then *in every single instance where an injunction issued against the government, the automatic stay would have to be vacated.* The "compelling circumstances" test applied by the District Courts of Appeal must require something above and beyond the grounds that

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[14] This is precisely what the trial court did here, conflating the merits of the underlying injunction with the subsequent determination of compelling circumstances sufficient to justify vacatur of the government's automatic stay pending appeal.

[15] Below, even though Appellees in their motion to vacate cited the "compelling circumstances" test, the trial court seemed adamant that it had no obligation to find compelling circumstances and it could base its vacatur solely on the irreparable harm it had already found and the City's lack of likelihood of success on appeal. A. 73, 75. When the City pointed to abundant First District precedents on the subject, the trial court insisted on binding automatic stay precedent from this Court to the contrary. A. 73. Appellees, ironically, never cited to such precedent, relying instead solely on a single First District decision: *Dep't of Ag. and Consumer Servs. v. Henry & Rilla White Found., Inc.*, 317 So. 3d 1168 (Fla. 1st DCA 2020).

support injunctive relief; otherwise, the test would invariably be meaningless in the injunction setting. And to be certain, it is undisputed that the standard for entry of an injunction nowhere mentions a "compelling circumstances" standard.

The District Courts of Appeal have explained that the purpose of the Rule 9.310(b)(2) automatic stay is to provide the "commensurate degree of deference" afforded to governmental decisions, as well as (and just as importantly) protect the public against "any adverse consequences realized from the proceedings under an erroneous judgment." *DeSantis*, 325 So. 3d at 150 (quoting *St. Lucie Cnty. v. N. Palm Dev. Corp.*, 444 So. 2d 1133, 1135 (Fla. 4th DCA 1984)); *Tampa Sports Auth. v. Johnston*, 914 So. 2d 1076, 1084 (Fla. 2d DCA 2005) (recognizing that automatic stay rule is "founded in judicial deference to planning-level governmental decisions"). It is precisely because of these concerns that a party moving to vacate an automatic stay "must demonstrate that 'the equities are *overwhelming[ly]* tilted against maintaining the stay." *Med. Marijuana*, 250 So. 3d at 828 (quoting *Johnston*, 914 So. 2d at 1084) (emphasis added).

Additionally, the party seeking vacatur has the burden of producing evidence showing "the most compelling circumstances," for vacating an automatic stay. *DeSantis*, 325 So. 3d at 150 (quoting *Dept. of Env't Protection v. Pringle*, 707 So. 2d 387, 390

(Fla. 1st DCA 1998), *quashed on other grounds by Dept. of Env't Protection v. Pringle*, 743 So. 2d 1189 (Fla. 1st DCA 1999)); *Med. Marijuana*, 250 So. 3d at 828. Thus, even when other considerations may counsel in favor of vacating the automatic stay, the stay *cannot* be vacated without a sufficient showing of compelling circumstances as well. *See Med. Marijuana*, 250 So. 3d at 828 (quashing trial court order vacating automatic stay where movant-appellee failed to show compelling circumstances existed to support order vacating stay); *see also Henry & Rilla White Found.*, 317 So. 3d at 1170–71 (vacating automatic stay only after finding that movant-appellee "met its burden in [all] three respects"—including by sufficiently showing compelling circumstances).

As elaborated below, Appellees failed in their burden of showing compelling circumstances or that reinstatement of the staywould cause them irreparable harm. Here, the automatic stay maintains the Ocean Drive traffic status quo that has existed for the past three years, under which the Clevelander Hotel has operated with access to the property. In contrast, little attention has been paid to the consequences of restoring Ocean Drive, in a rushed manner, to some pre-COVID traffic configuration on the tens of thousands of residents and tourists that have grown accustomed to using the northbound lanes of Ocean Drive daily for recreational purposes *during the past more than four years*. At a

minimum, doing so implicates safety concerns for pedestrians and bicyclists that have not been studied and could not be effectively studied within the short window given by the trial court for compliance. Certainly, the Injunction Order does not address these pedestrian or cyclist concerns.

II. APPELLEES FAILED IN THEIR BURDEN TO DEMONSTRATE COMPELLING CIRCUMSTANCES FOR VACATUR OF THE AUTOMATIC STAY.

Attempting to establish "compelling circumstances," Appellees piggy-backed on the trial court's finding of irreparable harm in the Injunction Order. A. 97-98 (¶ 8) ("'Compelling circumstances' are present here. The same irreparable harm the Court found warranted … ordering injunctive relief requires that the automatic stay [sic] be vacated."). Appellees pointed to the trial court's irreparable harm finding that the closure of Ocean Drive "prevents" the Clevelander from escorting guests, employees, and deliveries "with speed and ease" in and out of the Clevelander as the basis for their claim that "further delay" [of the total opening of Ocean Drive caused by the stay] will "continue" to "risk significant impairment to the Clevelander's operations[.]" *Id.* However, Appellees failed to provide any *evidence* remotely demonstrating that their purportedly irreparable harm is sufficient to meet the required "compelling circumstances" standard warranting vacatur of the automatic stay,

particularly when one considers that Ocean Drive has been either entirely or partially closed to vehicular traffic for almost five years. Appellees pointed to nothing new that transformed their alleged operational harm into the kind of compelling circumstances that would justify vacatur.[16]

The Second District's decision in *Johnston* is instructional on what constitutes sufficient "harm" to support a showing of "compelling circumstances." In *Johnston*, a purchaser of season tickets to the Tampa Bay Buccaneers home football games sued a state sports authority, claiming that suspicionless pat-down searches of his person at the home games violated his constitutional rights. 914 So. 2d at 1077–78. After the trial court enjoined the searches, the sports authority appealed, resulting in the automatic stay. *Id.* at 1078–79. Following the trial court's denial of the purchaser's motion to vacate the stay, the purchaser moved the appellate court to vacate the automatic stay. *Id.*

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[16] During the hearing, the trial court took considerable umbrage with the City's perpetuation of the one-way traffic flow on Ocean Drive when its original authorization from the County had expired. A. 71-72. But it remains undisputed that the City's engagement with the County with respect to the traffic configuration has been continuous since May 2020, and the County, which has exclusive jurisdiction, has in fact invited the City to pursue permanent approval of the one-way traffic condition.

The Second District observed that if the stay were to remain in force during the appeal, the purchaser would be subject to the challenged pat downs each time the Buccaneers played at home, and before the appeal would be completed, "all or nearly all of the Buccaneers' 2005 home games likely will have been played[.]" *Id.* at 1079, 1083. Thus, the purchaser would suffer "definite, irreparable, and irremediable harm"—being patted down at every single 2005 home game—that he would have "no ability to avoid or lessen" while the appeal remained pending. *Id.* And even if he were to successfully defend the injunction on appeal, the Second District reasoned that "the expiration of the 2005 season in the meantime would completely deprive [the purchaser] of [the injunction's] benefit" (*i.e.*, enjoining the state sports authority from conducting pat downs at each home game). *Id.* Thus, because of the unique temporal circumstances of the case and their impact on the season ticket holder's interests, the Second District disagreed with the trial court's determination that there were no compelling circumstances and vacated the stay. *Id.* at 1081, 1084.

Appellees' circumstances are nothing like the circumstances faced by the purchaser in *Johnston*. The Clevelander Hotel has faced the exact same circumstances for the past three years: since January 2022, both southbound lanes of Ocean Drive have been open to vehicular traffic, parking, and valet services for the hotel's

use—services which the Clevelander can, in fact, use because it abuts those lanes—effectively resulting in the same state of affairs that existed on the southbound lanes of Ocean Drive before the initial complete road closures in May 2020. From January 2022 until late 2024, when they moved for partial summary judgment, *none of the Appellees sought relief from the one-way southbound traffic configuration*.

Moreover, from 2020 to 2022, while the Clevelander Hotel experienced worse access issues in that Ocean Drive was fully closed to traffic, the trial court declined to enjoin the City specifically noting that access along 10th Street was sufficient—a point Appellees' counsel readily conceded in June 2021.[17]

On these facts, the circumstances the Clevelander Hotel faces are nothing like those faced by the ticket purchaser in *Johnston*, given that during the pendency of the appeal it can continue to operate, as it has for more than three years, using the southbound lanes, while the automatic stay remains in place.

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[17] While the trial court during the vacatur hearing noted that in June 2021 the City's closure of Ocean Drive was done with County authorization, the trial court's observations about access to the hotel are what's relevant to the question of compelling circumstances. In 2021, with all of Ocean Drive closed to vehicular traffic, access to the Clevelander Hotel *was* available through 10th Street. There cannot be "compelling circumstances" when, today and for past three years, access to the hotel is greater.

For related reasons, the primary case relied on by Appellees below, *Henry & Rilla White Foundation*, is distinguishable as well. There, a hearing officer determined that a nonprofit youth organization was entitled to relief from a state agency's reimbursement demand related to the youth organization's provision of meals to juvenile detention centers. 317 So. 3d at 1169–70. The state agency appealed, triggering the automatic stay, which the youth organization sought to vacate. *Id.* at 1170. The First District found that compelling circumstances warranted vacating the stay because the state agency had yet to process the youth organization's application for payment even though the organization "continue[d] to provide daily meals to the children" at multiple juvenile detention centers. *Id.* "[F]urther delay and uncertainty over [the organization's] ability to provide meals would cause monetary harm while also *unjustifiably risking significant impairment to [the juvenile detention centers'] operations*." *Id.* (emphasis added). There is no indication in the opinion that the nonprofit had been operating under the same operating conditions for any significant period, unlike the Clevelander Hotel, which has been operating with the same one-way (or even entirely closed) Ocean Drive configuration for almost five years.

Unlike the organization in *Henry & Rilla White Foundation*, the Clevelander Hotel's ability to conduct its business does not depend

upon any payment from the City; additionally, there is no "unjustifiable risk" of significant impairment to the hotel's operations because, as explained above, the two southbound lanes on Ocean Drive directly abutting the Clevelander are currently open and have been open to the Clevelander to use for over three years. Thus, Appellees are not facing the same type of sudden "definite, irreparable, and irremediable harm" that warranted a finding of compelling circumstances in *Johnston* and *Henry & Rilla White Foundation*.

In the absence of any factual support, Appellees have failed to provide any legal authority permitting the trial court to vacate the stay where (1) the Clevelander Hotel has faced the exact same one-way-condition (or a no-vehicular-traffic condition) for the past five years; and (2) those circumstances have nonetheless allowed the Clevelander Hotel to operate its business as it wishes to do so by using either 10th Street (as counsel acknowledged in 2021) or the southbound lanes on Ocean Drive. *See Pringle*, 707 So. 2d at 390 (reinstating stay in part because appellees failed to provide authority supporting vacating stay based on unsubstantiated allegations of "rising tensions" regarding enforcement of restrictions in enjoined law).

But even if Appellees had alleged a sufficient "harm" in their motion below, they failed to recognize that their burden is an

evidentiary one. *DeSantis*, 325 So. 3d at 150 ("The party seeking to vacate an automatic stay has the burden of *producing evidence* showing 'the most compelling circumstances.'") (emphasis added) (quoting *Pringle*, 707 So. 2d at 390). Instead, they chose to defer to the trial court's previous findings in the Injunction Order and the hearing that led to its issuance. The problem, of course, is that no evidence (let alone an explanation) was offered at the hearing on their Motion for Partial Summary Judgment of a *single* instance supporting their claim that the Clevelander's ability to escort guests, employees, and deliveries in and out of the building "with speed and ease" had been "impeded" by the one-way configuration of Ocean Drive. Nor was there any evidence offered or explanation given as to how the hotel's "operations" have otherwise been "significantly impaired." There was no evidence of financial injury beyond Mr. O'Brien's conclusory, self-serving declaration. Even taking Appellees at their word that their business has somehow suffered, generally, since COVID-19, they have produced no evidence that such suffering was caused by Ocean Drive's traffic configuration, as opposed to simply less favorable business conditions for other reasons.[18]

[18] For example, the repeated annual instances of dangerous crowds and arrests reported by the media during recent Spring Breaks or other holiday periods.

Under similar circumstances, the First District has rejected a motion to vacate a stay. In *Pringle*, commercial fishermen sought to enjoin a law prohibiting certain nets from being used in inshore waters. 707 So. 2d at 388. Following an evidentiary hearing, the injunction was granted, after which the State appealed, resulting in the automatic stay. *Id.* at 389. The fishermen then sought to vacate the stay based on certain "testimony" proffered at the injunction hearing, in addition to an affidavit attached to their motion which alleged that certain county sheriffs were concerned that "rising tensions" between commercial fishermen and law enforcement would "lead to something much more serious if the injunction was not [stayed]." *Id.* The First District, emphasizing the movant's "evidentiary burden" to show compelling circumstances, cast aside the proffered testimony because it was "never introduced into evidence and [could not] constitute the basis for a showing of compelling circumstances." *Id.* at 390. Additionally, the court found "no compelling reason to vacate the automatic stay" based on the "limited evidence" provided in the affidavit attached to the motion. *Id.*

Here, Appellees failed to point to any proffered evidence at the hearing on their motion for partial summary judgment that would remotely support a showing of compelling circumstances. And even

if they had, under *Pringle*, such evidence has no relevance if it has not been admitted into evidence.

Moreover, Appellees have failed to attach an affidavit or any other form of "limited evidence" to their vacatur motion, unlike the fishermen in *Pringle*—which still wasn't enough to satisfy the evidentiary burden in that case. What remains is a naked attempt to latch on to the trial court's rulings and findings in the Injunction Order. Under *Pringle*, that is not enough to prove compelling circumstances. Accordingly, the trial court's order should be quashed and the automatic stay reinstated to preserve the status quo of the past several years pending resolution of the City's appeal on a quintessential planning function like traffic flow within the City and on the separation-of-powers principles that prevent the judicial branch from dictating policy on how traffic flow and road configuration should look.

III. IN THE ALTERNATIVE TO REINSTATING THE STAY, THE COURT SHOULD IMPOSE A BOND REQUIREMENT IN CONNECTION WITH THE INJUNCTION MANDATING THE RECONFIGURATION OF OCEAN DRIVE.

The City, in the alternative, requested in its response below that if the trial court was inclined to vacate the automatic stay, it condition its vacatur on the posting of a sufficient bond by Appellees to cover the taxpayer expense of reconfiguring Ocean

Drive to its pre-COVID-19 status and then return it to its current configuration once the County approves the permit that it explicitly invited the City to pursue in its January 7th letter (and which the City is, in fact, pursuing), or this Court reverses. Fla. R. App. P. 9.310(b)(2) ("On motion, the lower tribunal or the court may extend a stay, impose any lawful conditions, or vacate the stay.").

In the absence of the automatic stay, the City would be required to comply with the Injunction Order (the deadline for which has already expired) at considerable expense to City's taxpayers. Appellees have insisted (and the trial court has agreed) that the City must comply with the Injunction Order during the pendency of the appeal or before the County can complete is review and approval of the current one-way traffic configuration of Ocean Drive. That being the case, requiring a bond would protect the City's taxpayers from the expense of reconfiguring Ocean Drive and then potentially returning it to its present configuration shortly thereafter.[19]

The City presented evidence that the cost of reconfiguring Ocean Drive to its pre-COVID-19 status and then restoring to its present configuration would range from a few hundred thousand

[19] Of course, to the extent the automatic stay were reinstated during the pendency of the appeal, no bond would be necessary.

dollars to approximately $1 million, depending on the degree of destructive roadwork needed. A. 93-94. The City estimated that a bond in the amount of $1 million would suffice to protect City taxpayers.

The purpose of requiring a bond in connection with a stay is to primarily to protect the party adversely affected and be compensated for any damages, costs, or losses incurred due to the stay effects. *See, e.g., City of St. Peterburg v. Wall*, 475 So. 2d 662, 663-64 (Fla. 1985). While the bond at issue in *Wall* was in connection with the imposition of a stay, its logic applies equally in a setting when an automatic stay is stripped from the governmental entity entitled to it. *See* Fla. R. App. P. 9.310(b)(2) ("On motion, the lower tribunal or the court may extend a stay, impose any lawful conditions, or vacate the stay."). This Court should reinstate the automatic stay for the reasons set forth above, but if it does not, this Court should at least impose the lawful condition of a bond.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 7, 2025, a true and correct copy of the foregoing was served via the Court's E-Filing Portal upon all parties listed on the attached service list.

/s/ *Edward G. Guedes*
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