

City of Miami Beach v. Clevelander Ocean, L.P., No. 3D21-1345, 2022 WL 610218 (Fla. 3d DCA 2022).

Competent, Substantial Evidence Existed to Support the Trial Court's Determination that Hotel Should Not Be Subjected to Subsequent Regulations Limiting Noise

Appellee, the Clevelander Ocean, L.P. (the "Clevelander") is a multi-story hotel located within the MXE Mixed Use Entertainment District. The Clevelander contains a restaurant and bar, and has operated as an outdoor entertainment facility since the 1980s. The noise generated at the Clevelander's events consistently exceeded ambient levels. In 1995, the City of Miami Beach (the "City") changed the noise ordinance, which previously prohibited noise that "crosses a real property line at a volume which is [u]nreasonably loud." While this "reasonability" standard was in place, the Clevelander applied for a certificate of appropriateness from the City. The Historic Preservation Board ("Board") approved the application, allowing the hotel to generate noise not exceeding 78 decibels.

In 2000 and 2010, respectively, the Clevelander received conditional use permits ("CUPs") for relocation of an existing stage and construction of a platform over a pool. These CUPs incorporated the 78-decibel limit imposed by the Board. In 2006, the City's noise ordinance was again amended, making it unlawful to generate "any unreasonably loud, excessive, unnecessary, or unusual noise." At the same time, the City also enacted the Eastbound Noise Exemption, which exempted specific properties, including the Clevelander, from the general noise ordinance. In 2021, the Eastbound Noise Exemption was rolled back from 5:00 a.m. to 2:00 a.m and changed to no longer include the Clevelander even though the original Eastbound Noise Exemption remained in place in other parts of the City. After the repeal, the City enforced the general noise ordinance against the Clevelander, who in turn sought an injunction to prevent the enforcement of the repeal. The trial court held that the City was enjoined from enforcing its general noise ordinance against the Clevelander, and the City appealed.

The Third DCA focused its analysis on when private landowners may acquire vested rights in their land use that protect them against the enforcement of subsequent legislation. These rights are typically viewed through the lens of equitable estoppel, which turns on underlying factual determinations. Equitable estoppel is designed to protect a property owner from enforcement of a subsequent regulation when the owner has received approval for and made substantial efforts to undertake a property use consistent with a prior regulation. The Third DCA noted that the analysis involved is not exclusively between the municipality and the individual litigant, but rather all affected residents of the community who have an interest in protecting their property values.

Because the circuit court below granted relief to the Clevelander, the Third DCA only had to determine whether there was sufficient evidence to support the Clevelander's theory of estoppel. The evidence presented below by the Clevelander consisted of the Board order; the CUPs which reincorporated the decibel limit in the Board order; the consistently excessive noise

generated by the Clevelander despite the various noise regulations; and the City's creation of an economic inducement to the multi-million dollar acquisition of the Clevelander and subsequent improvements to the sound system. The Third DCA held that there was competent substantial evidence to uphold the decision of the trial court, and it would be unjust to enforce the noise ordinance repeal after the Clevelander incurred extensive expenses in reliance upon the decibel limit in the Board order and CUPs.