

City of Holmes Beach v. Mojito Splash, LLC, No. 2D20-2005 (Fla. 2d DCA Aug. 18, 2021)
&
City of Holmes Beach v. Coral Escapes of Holmes Beach, LLC, No. 2D20-2004, 2021 WL 3640055
(Fla. 2d DCA Aug. 18, 2021)

Second DCA Remands *City of Holmes Beach* Cases to Determine Entitlement to Attorneys' Fees

The City of Holmes Beach (the “City”) challenged a circuit court order denying its motion for attorney’s fees and costs under the Bert J. Harris, Jr., Private Property Rights Protection Act, section 70.001, Florida Statutes (“Bert Harris Act”). The Second DCA reversed and remanded for further proceedings consistent with the holding in *City of Holmes Beach v. Coral Escapes of Holmes Beach, LLC*, where the court remanded to determine whether the offer “reasonably would have resolved the claim fairly to the property owner if the settlement offer had been accepted by the property owner.”

The *Coral Escapes* court was determining whether the circuit court correctly found that the City did not make a bona fide settlement offer and was therefore not entitled to attorneys’ fees. The Coral Escapes property owner argued that the City’s written response did not constitute a “bona fide offer” to settle the case by offering a compromise because it proposed no changes to its prior action. However, the Second DCA determined that section 70.001(4)(c) permits a settlement offer that effectuates “[n]o changes to the action of the government entity.” Therefore, because the circuit court incorrectly found that the City did not make a bona fide settlement offer, it never answered the question of whether the offer would have “reasonably and fairly” resolved the claim. The *Coral Escapes* court stated that, to be entitled to fees, the government entity must prevail in the action and the court must find that the property owner did not accept a “bona fide settlement offer” that would have “reasonably and fairly” resolved the claim. Both cases were reversed and remanded to determine if the City is entitled to attorney’s fees under this interpretation.