

Karenza Apartments, LLP v. City of Miami, No. 3D21-384, 2022 WL 2709425
(Fla. 3d DCA July 13, 2022)

Third DCA Holds that Landowner Who Was Permitted to Lease Advertisement Mural Space Under a Prior City Ordinance Could Bring a Valid Claim under the Bert J. Harris Act

On July 13, 2022, the Third DCA reversed the final summary judgment in favor of the City of Miami (the “City”) in an action brought under the Bert J. Harris, Jr. Private Property Rights Protection Act (the “Harris Act”). Karenza Apartments, LLP (“Karenza”) owns property in a portion of Miami that, until recently, was within a geographical area included in the City’s Mural Ordinance. According to Miami Code § 62-601, this Mural Ordinance allows the “display of art or graphics with minimal commercial message on buildings and walls” within certain commercial and special districts (the “Mural Ordinance”). From 2013 to 2017, Karenza’s property fell within this geographical area, and Karenza received significant rental income from hosting advertising murals on its property, which faces I-95.

In 2017, the City amended the Mural Ordinance to specifically exclude Karenza’s property from the geographical area in which murals could be displayed. Despite being similarly situated to neighboring properties, the amended ordinance carved out Karenza’s property and “effectively eliminated” Karenza’s ability to host advertising murals.

Karenza filed a complaint against the City under the Harris Act for damages for the loss of property value resulting from the amended Mural Ordinance. The trial court granted the City’s motion for final summary judgment, finding that the language of the Mural Ordinance does not create a vested right or any compensable interest for any advertiser permittee. Therefore, the trial court reasoned, “the existing temporary use Karenza had did not create a vested right, and the amended ordinance did not inordinately burden Karenza.”

The Third DCA reversed, finding that the trial court failed to objectively analyze whether Karenza had a reasonable, investment-backed expectation based on the then-existing land use ordinance—that it could continue to host murals on its property. Because disputed facts remained, the Third DCA found summary judgment to be improper, and it reversed and remanded the trial court’s decision for further proceedings.