

RESOLUTION NO. 2011-075
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(3) The award of attorney's fees in favor of the Heirs of Don MacarioMariano is reduced to Two Hundred Thousand Pesos (Php200,000.00) on equitable grounds.

All other aspects of the assailed Decision dated June 20, 2005 and other Order dated July 15, 2005 are hereby affirmed.

SO ORDERED."

WHEREAS, the City of secured a substantial gain from said Court of Appeals' decision given the June 20, 2005 RTC Decision where the City and other government agencies are bound to lose about a billion pesos worth of cash and properties per the dispositive portion of the latter decision which reads:

"WHEREFORE, premises considered plaintiffs-appellants having proved and convinced this Court by preponderance of evidence that the lower court committed a serious and reversible error in rendering the herein assailed decision, accordingly, the DECISION dated February 14, 2005 of the Court a quo is hereby REVERSED and SET ASIDE. Consequently, decision is hereby rendered in favor of the plaintiffs-appellants and against defendant-appellee ORDERING the latter the following:

(1.) For the defendant-appellee City Government of Naga, including all other government instrumentalities, agencies and offices claiming right of possession through and under it which are but not limited to Land Transportation Office, National Bureau of Investigation, Department of Labor and Employment, Philippine Postal Corporation, Fire Department and all other offices and buildings which are all claiming rights under defendant to immediately vacate the subject properties, Blocks 25 and 26 (LRC) Psd-9674 forming part of TCT No. 671 in the name of Macario A. Mariano and Jose A. Jimenez, and to peacefully surrender and deliver its physical possession to the plaintiffs-appellants, including all the improvements and structures erected thereon which were built in bad faith as they are now forfeited in favor of the plaintiffs-appellants;

(2.) For the defendant-appellee to pay plaintiffs-appellants the amount of P2,500,000.00 per month by way of reasonable compensation for the use and occupancy of the property in question reckoned from November 30, 2003 until such time that the defendant-appellee shall have vacated the subject property;

(3.) For the defendant-appellee to pay plaintiffs-appellants Attorney's fees in the amount of P587,159.60; and

(4.) For the defendant-appellee to pay the cost of the suit.

SO ORDERED."

WHEREAS, contrary to earlier comments and reports, a Comparative Analysis of the RTC and CA decisions, copy attached as integral part of this resolution, clearly supports the conclusion that the City of Naga obtained substantial reliefs from the Court of Appeals. Nonetheless, the city can still build on such gain given the following preliminarily observations from the Decision of the Court of Appeals, to wit:

1. The CA did not rule on City's defense of "estoppel by laches" (*Teotimo Eduarte vs. Court of Appeals, et al.*). It also failed to rule on the City's submission that the property can no longer be recovered, it being designated as "open space" of the subdivision. Finally, it failed to rule on the basis of the doctrine in *Alfonso vs. Pasay City* and *Militante vs. CA*, that the property being devoted for public use can no longer be recovered by the owner who can only demand payment of just compensation. Other issues were likewise not ruled upon.
2. As to monthly rental, the amount was fixed based on a total area of 5 hectare. However, the CA failed to consider the fact that the City is not occupying the entire area because a large part of it is occupied by other government instrumentalities/agencies which the CA even recognized to be so. Further reduction of the monthly rental is not far off.
3. In fixing the rental, the CA applied Article 448, NCC. But this provides that the owner of the building (who built in good faith) shall pay reasonable rent only if he does not buy the land. In this case, LGU Naga did not say it is not going to exercise the option to buy the land.

WHEREAS, the City of Naga submits and so believes that its adversaries in the case are not entitled to any of the judgment or award secured in its favor;

WHEREAS, the city should therefore immediately file a **MOTION FOR RECONSIDERATION** of the March 7, 2011 decision of the Court of Appeals taking into consideration the above observations, among others;

NOW, THEREFORE, on joint and collective motion of the Members of the 10th Sangguniang Panlungsod of the City of Naga;

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BE IT RESOLVED, as it is hereby resolved, to direct the City Legal Officer to immediately prepare and thereafter file a Motion for Reconsideration of the March 7, 2011 decision of the Court of Appeals, 4th Division, in the case entitled: City of Naga vs Heirs of Jose Mariano and Helen S. Mariano, CA-G.R. SP No. 90547, and for that purpose, urging him to coordinate the Cadiz & Tabayoyong Law Office and other assisting lawyers.

LET COPIES of this resolution be furnished His Honor, the City Mayor for his concurrence, and the City Legal Officer for his information and appropriate action.

UNANIMOUSLY APPROVED.

Adopted: March 22, 2011

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WE HEREBY CERTIFY to the correctness of the foregoing resolution.

GIL A. DE LA TORRE
Secretary to the
Sangguniang Panlungsod

GABRIEL H. BORDADO, JR.
City Vice Mayor &
Presiding Officer

APPROVED:

JOHN G. BONGAT
City Mayor