

FIRST DIVISION

[G.R. NO. 166744, November 02, 2006]

AC ENTERPRISES, INC., PETITIONER, VS. FRABELLE PROPERTIES CORPORATION, RESPONDENT.

D E C I S I O N

CALLEJO, SR., J.:

Before the Court is a petition for review on *certiorari* of the Decision^[1] of the Court of Appeals (CA) in CA G.R. SP No. 82166, affirming the Order^[2] of the Regional Trial Court (RTC) of Malabon City in Civil Case No. 3742-MH, which denied the Motion to Dismiss of petitioner AC Enterprises, Inc. (ACEI), as well as the Resolution of the CA denying the motion for reconsideration thereof.

Petitioner, a corporation duly organized under domestic laws doing business in the Philippines, owns the 10-storey Feliza Building located along Herrera Street, Legaspi Village, Makati City. The building was subdivided into commercial/office units which were leased to private persons and entities. There are 36 blowers from 18 air-cooled type airconditioning units in the building, four blowers on each floor, from the 2nd to the 10th floors. The blowers are aesthetically covered by vertical concrete type baffles.

Respondent Frabelle Properties Corporation (FPC), formerly FTL & Sons Development Corporation,^[3] is the developer of Frabella I Condominium (Frabella I), a 29-storey commercial/residential condominium located at 109 Rada Street, Legaspi Village, Makati City. It owned some units in the condominium which it leased to its tenants. The building is managed by the Frabella I Condominium Corporation (FCC).

Rada and Herrera streets lie parallel to each other such that Feliza Building is situated at the back of Frabella I. Feliza Building is at the back of Frabella I and is separated by Rodriguez Street, a two-lane road approximately 12 meters wide^[4] The street is bounded by the Thailand Embassy on the side of the street of Frabella I. The exhaust of the blowers from the airconditioning units at the Feliza Building were directed towards the rear of Frabella I.

On April 11, 1995, respondent wrote petitioner demanding that the latter abate the daily continuous, intense and "unbearable noise" and the hot air blast coming from the 36 blowers in the Feliza Building. Petitioner rejected the demand in a letter dated May 15, 1995. Respondent reiterated its demand for ACEI to abate the nuisance in a letter dated June 6, 1995.

On June 29, 1995, respondent requested that the 36 blowers of Feliza Building be tested by the NCR Environmental Management Bureau (EMB) of the Department of Environment and Natural Resources (DENR). On August 11, 1995, it received a

report from the EMB that the noise generated by the blowers of Feliza Building is beyond the legal allowable level under Section 78(b) of Presidential Decree (P.D.) No. 984, as amended. FPC had the blowers tested anew by the EMB on December 8, 1995 and July 1, 1996 with the same results. Despite repeated demands, petitioner refused to act on the matter.

On August 14, 2000, respondent again wrote petitioner, demanding that it abate the nuisance. Petitioner ignored the letter anew. Respondent then had the blowers tested again by the EMB with same results as evidenced by its report dated August 29, 2000 and November 4, 2000.

On March 11, 2001, Frabelle I Condominium Corporation, through counsel, Ang & Associates, as complainant, filed a complaint against petitioner with the Pollution Adjudication Board (PAB) for the abatement of noise and/or air pollution and damages with a plea for injunctive relief. The complainant alleged therein that it managed the Frabella 1 and that its members own units in the condominium. It alleged, *inter alia*, that:

6. Feliza Building's airconditioning system is served by some 36 blowers, installed 4 blowers to each floor, all located on the same sidedirectly facing Frabella I.
7. Everytime the Feliza Building's airconditioning system is turned on, all or a good number of the 36 blowers operate at the same time. As a direct result of the operation of the blowers, unbearable hot air is generated and blown towards Frabella I.
8. Apart from the hot air, the blowers also generate a continuous, deafening, intolerable and irritating, vibrating noise which makes normal conversation across the street and at the Frabella I difficult if not impossible.
9. As a consequence of such hot air, vibrating and intolerable noise, the occupants of Frabella I have been, and still are, prevented from enjoying peaceful and comfortable use of their property thereby forcing them to vacate and/or transfer elsewhere.
10. Such intolerable noise, hot air, and vibration constitute noise and/or air pollution violative of P.D. 984, the Clean Air Act and other related environmental laws.
11. In all good faith without any desire to cause any unnecessary inconvenience or trouble, the complainant, for the last several years, has written and made numerous contacts with the respondent complaining about this pollution, even soliciting the help and intercession of the Makati Commercial Estate Association, Inc. (MACEA) and the Metro Manila Development Authority (MMDA) to try to settle the matter amicably.
12. On the other hand, the DENR, over a span of several years, has conducted several tests. As shown by the results, the noise and vibration generated by the Feliza Building blowers exceeds the

DENR and Local Government ambient noise standards hence, it undoubtedly constitutes pollution.^[5]

The complainant prayed that judgment be rendered in its favor, thus:

WHEREFORE, it is respectfully prayed that after notice and hearing, a Decision be rendered in favor of complainant and against the respondent:

1. Declaring the intolerable noise, hot air and vibration generated by the Feliza Building blowers as a noise and/or air pollution and ordering the respondent to abate the same and in case of failure to do so, that the establishment be closed or ordered to cease operations.
2. After arbitration, ordering the respondent to indemnify the complaint for actual damages at not less than P5,000,000.00 and to reimburse it for attorney's fees and expenses of litigation at not less than P400,000.00.
3. Condemning the respondent to pay the corresponding fines and other administrative penalties for each day of continuing pollution.

Complainant prays for other relief just and equitable in the premises.^[6]

While the case was pending, respondent, through its Vice-President, wrote Dr. Maria Leonor B. Soledad, City Health Officer of Makati City, requesting her intervention to order petitioner to abate the noise and hot air coming from the blowers of the Feliza Building. On March 5, 2002, Dr. Soledad replied that a panel must be formed to settle the matter.

In a letter dated March 7, 2002, respondent requested Makati City Mayor Jejomar C. Binay not to renew or to cancel the Mayor's License and Business Permits of Feliza Building and to compel petitioner to comply with the law.^[7] Copies of the letter were forwarded to Engr. Nelson B. Morales, the City Building Official, and Atty. Enrico Lainez, City Attorney.

Engr. Morales acted on the letter and wrote the EMB on April 30, 2002, requesting the investigation of the complaint relative to the noise from the airconditioning units of the Feliza Building.^[8] A panel from the EMB conducted tests on the 36 blowers of Feliza Building from 10:30 a.m. to 12:50 p.m. on May 24, 2002. On June 28, 2002, the Panel submitted its Investigation Report, stating that the passing of vehicles along the street and the blowers of nearby building contributed to the ambient noise quality in the area. The report stated that since DENR Administrative Order No. 30 devolved the functions of the DENR on the abatement of noise nuisance to the Local Government Unit, the case should be endorsed to the City Government of Makati for appropriate action.^[9]

Regional Director Sixto E. Tolentino, Jr. of the EMB forwarded the report to Engr. Morales on July 2, 2002.^[10] In a letter dated July 19, 2002, Engr. Morales informed respondent that based on the result of investigation conducted by the DENR

Management Bureau on Sound Pressure Levels (SPL) measured on the different sampling stations, the excess in the noise quality standard within the vicinity does not come from the airconditioning system with 36 blowers of Feliza Building alone; there were other prevailing factors to consider," which is beyond the control of said building *and since the final result has been rendered and resolved by the concerned government agency, it is properly advised that further inquiry or anything involving a sound environment process which is not sanctioned by this office, be addressed directly to the said agency.* "[11]

Copies of the letter were furnished to the City Mayor, the City Attorney and petitioner. Respondent then wrote Engr. Morales seeking clarification, wanting to find out why the matter should be referred to the EMB when the latter had already endorsed the matter to the City of Makati. A conference was held between the executives of respondent and Engr. Morales. The latter insisted on the report of the EMB and his July 19, 2002 letter and dared it to go to court if it was not satisfied with the report and his resolution of the matter.

Respondent then wrote another letter to the EMB relative to the May 24, 2002 Report of the Panel. The EMB conducted SPL measurements anew on February 4, 2003. Per its Report submitted on November 24, 2003, the EMB declared that, from the table, it is evident that the SPL measurements were high when the doors were opened compared to the readings when the doors were closed. However, the EMB emphasized that the standards in Section 78 (b) of the Implementing Rules and Regulations of P.D. No. 984 could not be applied since the provisions were for ambient noise. It pointed out that the SPL measurements were taken inside the building. The EMB opined that since the nature of complaint is regarding noise nuisance generated from the firm's blowers, the SPL measurements were not the critical factor in the resolution of the issue. It stated that the noise needs not to be high or low to annoy or cause nuisance to the receptor, for as long as the complainant is disturbed with the level of sound coming from the firm, it was considered a nuisance.[12]

On July 1, 2003, respondent filed a complaint for the abatement of nuisance with damages with prayer for the issuance of a writ of preliminary and permanent injunction before the RTC of Malabon City against petitioner. The complaint alleged the following:

6. The Feliza Building's airconditioning units are served by some 36 blowers, 4 blowers to each floor located outside the windows of the building facing directly towards the Frabella I Condominium. The 36 blowers were installed from the 2nd floor to the 10th floor of the building and these blowers are aesthetically covered by a vertical concrete sun baffles.
7. [Every time] the Feliza Building's airconditioning system is turned on, all or a good number of the 36 blowers are made to operate simultaneously. The operation of the Feliza's blowers generates a continuous deafening unbearable vibrating and stressful noise affecting the tenants of the Frabella I Condominium. Hot air is also blasted from the [Feliza] Building's blowers to the direction of the Frabella 1 Condominium.

8. The tenants occupying the 5th to the 16th floors of the Frabella I Condominium facing Feliza Building are directly subjected to a daily continuous intense noise and hot air blast coming from the blowers of the[10-storey] Feliza Building. Some are tenants of plaintiff, who have complained to plaintiff about the matter. Tenants who could not bear the nuisance any longer have vacated their units, and as a result, many units of plaintiff have remained vacant, and unoccupied or uninhabitable, thereby depriving plaintiff with rental income that it should have otherwise be receiving.
9. In all good faith, without any desire to cause any unnecessary inconvenience or trouble, plaintiff has written and made numerous contacts with defendant to complain about this nuisance, even soliciting the help and intercession of the Barangay San Lorenzo, Makati Commercial Estate Association, Inc. (MACEA), Metro Manila Development Authority (MMDA), Makati City Government, Makati Pollution Office and Department of Environment and Natural Resources(DENR), to try to settle the matter amicably. Several meetings have taken place, as well as many correspondences made by plaintiff to defendant. But reasonable and lawful demands by plaintiff to abate the nuisance have been repeatedly ignored/refused by defendant. The demand letters, and the response of defendant to these letters, are herein attached and made integral part of this Complaint as follows:

<u>Date</u>	<u>Remarks</u>
<u>Annex</u>	
11 April 1995	Demand letter to abate
"A"	nuisance
15 May 1995	Response to demand letter
"B"	
06 June 1995	Follow-up demand letter
"C"	
14 August 2000	Follow-up demand letter
"D"	

10. There [are] more letters that were exchanged between plaintiff and defendant and/or their lawyers, but they will not be attached to this Complaint at this time to simplify the facts.
11. Even the Metro Manila Development Authority (MMDA) and Makati Commercial Estate Association, Inc. (MACEA) wrote defendant letters urging it to rectify and abate the nuisance. Copies of the letters of the MMDA dated 29 April 1996 and the MACEA dated 10 October 1996 are herein attached and marked as Annexes - "E" and "F"[,] respectively.
12. On the other hand, the DENR, over a span of 7 years, has conducted several noise sampling tests. As shown by the results, the unbearable noise generated by the Feliza's blowers is beyond the legally allowable level under Sec. 78(b) of P.D. 984, as indicated