

FIRST DIVISION

[G.R. No. 245438, November 03, 2020]

**FRABELLE PROPERTIES CORP., PETITIONER, VS. AC
ENTERPRISES, INC., RESPONDENT.**

DECISION

PERALTA, C.J.:

This petition for review on *certiorari* challenges the June 19, 2018 Decision^[1] and the February 18, 2019 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. CV No. 105817, which reversed and set aside the November 28, 2014 Decision^[3] of the Regional Trial Court (RTC) of Malabon City, Branch 74, in favor of AC Enterprises, Inc. (*respondent*).

Factual Antecedents

Frabelle Properties Corporation (*petitioner*), a domestic corporation, is the developer and manager of Frabella I Condominium, a 29-storey building composed of residential and commercial units and located at 109 Rada Street, Legaspi Village, Makati City. Petitioner owns some of the units in Frabella I Condominium, and leases them out to tenants.^[4]

Respondent, a domestic corporation, is the owner of Feliza Building, a 10-storey building composed of commercial and office units, and located along V.A. Rufino (formerly Herrera) Street, Legaspi Village, Makati City.^[5]

Frabella I Condominium was constructed around 1995, about five years later than Feliza Building. Both buildings are located in Legaspi Village, which at that time was already a bustling business and commercial area with numerous establishments and busy streets. Rada and V.A. Rufino streets lie parallel to each other, with Rodriguez Street, a two-lane road approximately 12 meters wide situated in between. Feliza Building is located at the back of Frabella I Condominium, such that the exhaust of the blowers from the air-conditioning units at Feliza Building faces the direction of the rear of Frabella I Condominium.^[6]

From the first to ninth floor of Feliza Building, there are air-conditioning units served by 36 blowers, with four blowers for each floor located outside the building's windows facing Frabella I Condominium.^[7] Only a portion of the rear side of Feliza Building faces Frabella I Condominium, while the remaining portion of Feliza Building faces the Thailand Embassy, a building adjacent to Frabella I Condominium.^[8]

Petitioner contends that respondent's blowers generate excessive noise and irritating hot air blown towards the direction of Frabella I Condominium. The noise and hot air are claimed to be a nuisance to petitioner and the tenants of Frabella I Condominium.^[9]

According to petitioner, it had complained to respondent about the blowers in at least three letters dated April 11, 1995, June 6, 1995 and August 14, 2000, all of which were ignored.^[10] It had also attempted to settle its complaint with respondent through other actions filed prior to the civil case. On March 10, 2001, petitioner filed a complaint with the Pollution Adjudication Board (*PAB*) for the abatement of noise and/or pollution and damages, with a plea of injunctive relief.^[11] In a letter dated March 7, 2002, petitioner filed a complaint with then Makati City Mayor Jejomar C. Binay with prayer to cancel the Mayor's License and Business Permits of the Feliza Building.^[12]

In response to petitioner's complaints, respondent introduced some improvements in 2000 and 2006, including the installation of soundproofing materials on all air-conditioning units and replacement of blowers and air-condensers.^[13] However, petitioner continued to insist that respondent cease operation of its blowers.

On July 1, 2003, petitioner filed a Complaint for Abatement of Nuisance with Damages, with prayer for issuance of a writ of preliminary injunction against respondent, docketed as Civil Case No. 3745-MN,^[14] originally raffled to RTC, Branch 170 of Malabon City, then re-raffled to Branch 74 upon the granting of respondent's motion to inhibit the presiding judge.^[15]

The parties presented their respective evidence, which the RTC and CA summarized in their respective decisions.

Evidence presented by petitioner

Consuelo Albutra^[16] (*Albutra*), petitioner's Vice President, testified that even while Frabella I Condominium was under construction, it had already informed respondent that the noise from the blowers will affect their prospective tenants, but respondent failed to take any remedial measures. Thus, petitioner sought the assistance of the Metropolitan Manila Development Authority (*MMDA*) and Makati Commercial Estate Association (*MACEA*). The MMDA and MACEA conducted an ocular inspection and found that the noise is on the intolerable level and exceeds the allowable standard level of 65 decibels per Section 78 (b) of Presidential Decree No. 984.^[17]

A series of noise pollution tests conducted by the Department of Environment and Natural Resources (*DENR*) in late 1995 up to early 1996 and in 2000 likewise bore the same result. As recommended by the DENR, petitioner referred the matter to the City Health Officer of Makati City, who conducted another test that resulted in findings similar to that made previously by MMDA, MACEA, and DENR.^[18]

With the continuance of the noise, petitioner's rental rate was allegedly reduced from 25% to 30% because tenants were allegedly vacating due to the noise and hot air.^[19] Petitioner presented letters of complaint from tenants, but failed to authenticate the same.

Of the tenants residing in Frabella I Condominium, only one testified. Tenant-witness Ma. Cristina A. Lee (*Lee*) who was occupying Unit 9-D facing Rodriguez Street testified that when she moved in Frabella I Condominium on June 2003, she noticed the loud noise and hot air going toward the direction of her unit, and upon checking, she noted it was coming from the blowers of the air-conditioning units of Feliza Building. Eventually, she never opened her balcony door and kept her air-

conditioning units operating most of the time. She complained to the administration of the noise and hot air, but continued to occupy her unit.^[20]

Jaime Matias (*Matias*), General Manager of MACEA, testified that MACEA is an association of property owners within the Makati Central District. Sometime in 1995, MACEA received a letter-complaint from petitioner in connection with the noise coming from the blowers of the air-conditioning units of Feliza Building. In response, MACEA wrote a letter to respondent advising it to adopt remedial measures, which it failed to do. MACEA then sought the assistance of the DENR and Makati City Engineering Office. This resulted in the conduct of noise level measurements and the issuance of a Cease and Desist Order by the Makati City Government.^[21]

Sometime in 2001, MACEA conducted its own monitoring of the noise and MACEA imposed a daily fine on respondent, which the latter protested. The testing in 2001 was done using MACEA's own equipment (rayon noise level meter) with the supervision of MACEA's Assistant Manager who was assisted by security guards.^[22]

Sometime in 2005, MACEA hired the services of the Technical Experts on Environmental Management which also conducted noise level tests and found that the noise level exceeded the allowable level of 65 decibels.^[23]

Francisco Cabeltis, Jr., Sanitary Inspector of Makati City Health Department testified that acting on a letter-request of petitioner, he and Romualdo Panopio conducted an ocular inspection on March 2, 2002 and found that there is still an intolerable noise emitted by the air-conditioning units of Feliza Building. In conducting the test, no special equipment was used other than the physical senses of their eyes and ears.^[24]

Lemelie Pascua (*Pascua*) testified that she was then an Environmental Management Specialist of the DENR and that she conducted an investigation on August 29, 2000 and September 27, 2000. On cross-examination, Pascua stated that the sound readings identified different sources of noise coming from the Thailand Embassy Building and some passing cars. She further noted that even when the blowers of Feliza Building were not in operation, the noise level already exceeded the permissible limits.^[25]

Evidence presented by respondent

Raulito Dumangon, who was authorized to represent respondent, testified that when Feliza Building was constructed in 1989, the vicinity was already a commercial area. At the time of Feliza Building's operation in 1990 up to 1995 when Frabella I Condominium was constructed, its air-conditioning units were not changed or altered, yet respondent never received complaints regarding the operation of its blowers.^[26]

He also testified that respondent voluntarily made modifications and rectifications to improve the condition of the air-conditioning units of Feliza Building. In 2000, respondent engaged the services of MBA Urethane Products Contractor to install soundproofing materials (*i.e.*, two inches of thick layer of polyurethane) on all the air-conditioning units in all the floors of the Feliza Building. In February 2006, respondent hired Polar Wind Airconditioning and Refrigeration, Inc., which replaced the blowers and air-condensers of the air-conditioning units at the sixth to tenth floors of the Feliza Building, and installed on its roof deck five units of condenser

fans. Respondent also installed re-routing ducts to divert and re-route the air away from Frabella I Condominium and towards V.A. Rufino Street.^[27] Respondent commenced the operation of the newly-installed air-condensers at the roof deck of the Feliza Building on June 28, 2006. The Office of the Building Official of Makati issued a Certificate of Operation that allowed respondent to operate its air-conditioning units.^[28]

Engineer Albert Lusterio (*Engr. Lusterio*), a Sanitary Engineer of the Makati City Health Department, testified that the Makati Health Office conducted a sound reading measurement and based on the results of the test, issued a closure order, to which respondent objected based on some technicality on the measurement. The City Health Officer then decided to avail the services of an independent sound expert, IAA Technologies, to conduct the measurement and reading of the noise.^[29]

The testing was done on November 22, 2008 at 1:00 a.m. After the said test, it was determined that the sound produced by the blowers is within the standard during the daytime. The Makati City Government then lifted the Closure Order.^[30]

Dar Quintos (*Quintos*), owner of IAA Technologies and expert in audio and acoustics, was deputized by the Makati City Health Department to conduct the noise pollution tests on the air-conditioning system.^[31] Quintos testified that he was the one who conducted the noise pollution test on that early morning of November 22, 2008, and rendered a report on his findings that the noise measured 63.4 decibels. Prior to that, on November 13, 2010, he also conducted a noise pollution test with a result that the noise measured 61.3 decibels, which he stated to be even below the noise levels specified in Makati Municipal Ordinance No. 93-181.^[32] He furnished his report to the Makati City Health Department, which then issued to respondent a permit to operate the air-conditioning units of Feliza Building.^[33]

The record also shows that the RTC issued an Order dated January 14, 2008, directing the Makati City Health Officer or her duly authorized representative to conduct a noise pollution test in the portion of Rodriguez Street located between Feliza Building and Frabella I Condominium on January 18, 2008. Hence, the Environment Health and Sanitation Division of the Makati Health Department carried out the noise pollution test in Rodriguez Street and inside Frabella I Condominium, and thereafter prepared and submitted the inspection report.^[34]

The RTC summoned Sanitation Inspector Felipe Albayda, Jr. (*Albayda*) from the Makati Health Department, who conducted the test. Albayda explained that the noise emanating from the Feliza Building exceeded the allowable noise limit.^[35]

Ruling of the RTC

After trial on the merits, the RTC rendered the Decision dated November 28, 2014^[36] in favor of petitioner, ruling that the noise generated by Feliza Building's blowers constitutes a private nuisance in favor of petitioner. It held:

In the instant case, there is preponderant evidence consisting of the testimonies of its witness, to convince the Court that the thirty six (36) blowers in defendant's Feliza Building generate noise and blow hot air in the direction of plaintiff's Frabella I Condominium which annoys and offends the plaintiff and its tenants, the noise being monophonic and

intense, and the hot air constantly blown towards its building, thus being of such character as to produce actual physical discomfort and annoyance to any person of ordinary sensibilities, rendering adjacent property less comfortable and valuable.^[37]

The RTC permanently enjoined respondent from turning on and/or operating all the 36 blowers of the air-cooled condensers, and awarded petitioner temperate damages based on the loss of earnings by 25% to 30% on its revenue from rental of its units, exemplary damages and attorney's fees.^[38]

Respondent moved for reconsideration of the RTC's Decision and for the inhibition of the presiding judge. Both motions having been denied by the RTC,^[39] respondent filed an appeal before the CA.

Ruling of the CA

On appeal, respondent averred that the RTC erred in relying on the testimony of a single tenant of Frabella I Condominium, tenant-witness Lee, and on the obsolete sound tests conducted sometime in 1995 and 2005. Respondent also argued that the RTC disregarded its recent evidence showing that the noise levels of the blowers are already within reasonable levels based on the readings and sound tests conducted thereon, and that the Makati City government has been continuously allowing respondent to conduct its business and operate its air-conditioning system in Feliza Building, as shown by various permits and certificates of authority to operate air-conditioning units. Further, respondent questioned the RTC's award of temperate and exemplary damages and attorney's fees.^[40]

Petitioner, on the other hand, argued that the evidence it presented was not obsolete, and it was able to prove the merit of its case by a preponderance of evidence as shown by the results of the testing done on January 18, 2008, which it asserts to have greater probative value than the testing conducted on November 22, 2008. Moreover, the RTC did not base its decision on the testimony of a single tenant considering the numerous letter-complaints of other tenants that were offered in evidence, and that witness Lee testified on behalf of all tenants similarly situated. On the award of damages and attorney's fees, petitioner averred that such was proper in light of respondent's continuous failure to act upon its complaints.^[41]

In its Decision dated June 19, 2018, the CA granted respondent's appeal, and reversed and set aside the RTC's Decision dated November 28, 2014.^[42]

The CA held that the standard used by the RTC, which is "whether it annoys or offends the senses of the plaintiff and its tenants in Frabella I Condominium" is not the accurate standard in determining the sufficiency of evidence of the existence of actionable nuisance entitling petitioner to relief and damages.^[43] In reaching such conclusion, the CA relied on the case of *AC Enterprises, Inc. v. Frabelle Properties Corporation*,^[44] which notably involved the same parties and factual antecedents, but had stemmed from a denial of respondent's motion to dismiss before the RTC:^[45]

Based on the foregoing, the mere existence of noise and hot air complained of by the plaintiff as offensive to sensibilities and causes