Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

FRABELLE PROPERTIES CORP.,
Petitioner,

G.R. No. 245438

Present:

PERALTA, *C.J.*, *Chairperson*
CAGUIOA,
CARANDANG,
ZALAMEDA,
GAERLAN, *JJ.*

- versus -

AC ENTERPRISES, INC.,
Respondent.

Promulgated:

NOV 03 2020

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D E C I S I O N

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

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1 Penned by Associate Justice Myra V. Garcia-Fernandez, with Associate Justices Ramon R. Garcia and Germano Francisco D. Legaspi concurring; *rollo*, pp. 41-73.

2 *Id.* at 75-76.

3 *Id.* at 128-140.

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

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4 *Id.* at 44.
5 *Id.*
6 *Id.* at 44-45.
7 *Id.* at 128.
8 *Id.* at 44.
9 *Id.* at 8.
10 *Id.*
11 *Id.* at 45.

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 1 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]

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12 *Id.*
13 *Id.* at 49-50.
14 *Id.* at 193.
15 *Id.* at 42.
16 Also spelled as Alborta in some parts of the *rollo*.
17 *Id.* at 128-129.
18 *Id.* at 129.

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

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19 *Id.*
20 *Id.*
21 *Id.* at 130.
22 *Id.*
23 *Id.*

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

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24 *Id.* at 130-131.
25 *Id.* at 48.
26 *Id.* at 131.
27 *Id.*
28 *Id.* at 49-50.

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

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29 *Id.* at 132.
30 *Id.*
31 *Id.* at 50.
32 *Id.* at 163.
33 *Id.* at 133.
34 *Id.* at 48.
35 *Id.* at 49.

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

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36 *Id.* at 128-138.
37 *Id.* at 137.
38 *Id.* at 137-138.
39 *Id.* at 43.
40 *Id.* at 52.

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 discomfort and annoyance are not enough to prove that the noise and/or hot air is an actionable nuisance.
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> The Supreme Court laid down the correct tests or standards of actionable nuisance, to wit:
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> > 1) Whether rights of property, of health or of comfort are so injuriously affected by the noise in question that the sufferer is subjected to a loss which goes beyond the reasonable limit imposed upon him by the condition of living, or of holding property, in a particular locality in fact devoted to uses which involve the emission of noise although ordinary care is taken to confine it within reasonable bounds; or in the vicinity of property of another owner who, though creating a noise, is acting with reasonable regard for the rights of those affected by it;
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> > 2) In every case the question is one of reasonableness. What is a reasonable use of one's property and whether a particular use is an unreasonable invasion of another use and enjoyment of his property so as to constitute a nuisance cannot be determined by exact rules, but must necessarily depend upon the circumstances of each case, such as

41 *Id.* at 53.
42 *Id.* at 41-73.
43 *Id.* at 56.
44 537 Phil. 114 (2006).
45 *Rollo*, pp. 62-63.

> locality and the character of the surroundings, the nature, utility and social value of the use, the extent and nature of the harm involved, the nature, utility and social value of the use or enjoyment invaded, and the like; and
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> 3) Annoyances and discomforts must not be more than those ordinarily to be expected in the community or district, and which are incident to the lawful conduct of such trades and businesses. If they exceed what might be reasonably expected and cause unnecessary harm, then the court will grant relief.[46]

In applying the above standard, the CA found that petitioner failed to discharge its burden of proving nuisance. It emphasized that the testimony of only one tenant-witness Lee, was not sufficient evidence on the extent and nature of the discomfort caused to the tenants of Frabella I Condominium. It was not shown by petitioner that the perception, sensibility and lifestyle of Lee represented the normal and ordinary level of sensitivity and habits of living of the other tenants who had supposedly been offended also by the noise and hot air from Feliza Building. The CA also took cognizance of the fact that notwithstanding the discomforts raised, Lee continued to occupy her unit and did not vacate.[47]

The CA also considered that the sound test reports from 1995 to 2008. It observed that based on the latest findings and reports of the Environmental Management Bureau and the Makati City government, the noise level in the area surrounding the Feliza Building and Frabella I Condominium is already within normal allowance limits for a commercial area. Consequently, the Makati City government issued to respondent the licenses and permits for the operation of new air-conditioning and machinery units, as well as operation of its business.[48]

Finding an absence of preponderance of evidence of the existence of actionable nuisance and for lack of sufficient evidence of the petitioner's claim of loss of business rental income, the CA found that the RTC committed reversible error in ordering the closure of respondent's 36 blowers and in awarding temperate and exemplary damages and attorney's fees.[49]

Petitioner filed a motion for reconsideration,[50] which was denied in the CA Resolution dated February 18, 2019.[51]

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46 *Id.*
47 *Id.* at 65-67.
48 *Id.* at 67-71.
49 *Id.* at 72.
50 *Id.* at 77-85.
51 *Id.* at 75-76.

Thus, petitioner filed this petition for review on *certiorari*, raising the following arguments:

> I. THE COURT OF APPEALS ERRED IN FAULTING PETITIONER FOR PRESENTING ONLY ONE (1) OF THE TENANTS COMPLAINING OF THE NUISANCE.
> II. THE COURT OF APPEALS ERRED IN RULING THAT PETITIONER FAILED TO PROVE AND TO ESTABLISH THE REQUIRED DEGREE OF EVIDENCE.
> III. THE COURT OF APPEALS ERRED IN GIVING WEIGHT TO THE PERMITS AND LICENSES ISSUED BY THE LOCAL GOVERNMENT OF MAKATI CITY TO FELIZA BUILDING.
> IV. THE COURT OF APPEALS ALSO ERRED IN REVERSING THE AWARD GRANTED BY THE REGIONAL TRIAL COURT TO PETITIONER FOR TEMPERATE, EXEMPLARY DAMAGES AND ATTORNEY'S FEES.[52]

In its Comment, respondent argues that the CA correctly ruled that the petitioner failed to prove by a preponderance of evidence that the noise emanating from the air-conditioning units of Feliza Building constitutes a nuisance, and that petitioner is not entitled to the payment of temperate and exemplary damages, and attorney's fees.[53]

The Issues

I. WHETHER OR NOT THERE IS AN ACTIONABLE NUISANCE

II. WHETHER OR NOT PETITIONER IS ENTITLED TO THE PAYMENT OF TEMPERATE AND EXEMPLARY DAMAGES, AND ATTORNEY'S FEES

Our Ruling

The petition must be denied for lack of merit.

It is a settled rule that the Supreme Court is not a trier of facts. The function of the Court in Petitions for Review on *Certiorari* Under Rule 45 of the Rules of Court is limited to reviewing errors of law that may have been

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52 *Id.* at 54-55.
53 *Id.* at 167.

committed by the lower courts.[54] Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this Court.[55]

In *Far Eastern Surety and Insurance Co. Inc. v. People of the Philippines*,[56] the Court held:

> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, its resolution must not involve an examination of the probative value of the evidence presented by the litigants, but must rely solely on what the law provides on the given set of facts. If the facts are disputed or if the issues require an examination of the evidence, the question posed is one of fact. The test, therefore, is not the appellation given to a question by the party raising it, but whether the appellate court can resolve the issue without examining or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.[57] (Citations omitted)

A question of fact requires this court to review the truthfulness or falsity of the allegations of the parties. This review includes assessment of the probative value of the evidence presented.[58]

In this case, petitioner in seeking a determination if the CA erred in its appreciation of the evidence presented, asks this Court to assess the probative value of the evidence presented and therefore raises a question of fact.

However, these rules admit of exceptions, which were listed in *Osmundo Medina v. Mayor Asistio, Jr.*:[59]

> (l) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8)

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54 *Teresita E. Pascual, Widow of the Late Romulo Pascual, who was the Heir of the late Catalina Dela Cruz and Attorney-In-Fact of her Children and for her own behalf, v. Encarnacion Pangyarihan Ang, Spouses Emelita Ang Gan and Vicente Gan, Spouses Nilda Ang-Roman and Roberto Roman, Spouses Rosita Ang-Estrella and Lunaver Estrella, Ernest Ang, Antonio Ang, Spouses Ruby Ang-Tan and Julio Tan, Spouses Ma. Victoria Ang-San Pedro and Amado San Pedro, and Danilo Ang*, G.R. No. 235711, March 11, 2020.

55 *Maribelle Z. Neri v. Ryan Roy Yu*, G.R. No. 230831, September 5, 2018.

56 721 Phil. 760 (2013).

57 *Id.* at 767.

58 *Supra* note 55.

59 269 Phil. 225 (1990).

> When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[60] (Citations omitted)

In this case, an exception applies – the findings of the CA are contrary to those of the RTC. The Court will proceed to resolve the present petition.

Burden of proof in nuisance claims

In this case, petitioner, as plaintiff, has the burden of proving by a preponderance of evidence that the noise from the blowers of Feliza Building is an actionable nuisance. After due consideration of the factual findings of the trial court, we rule that petitioner failed to discharge its burden.

Under Section 1, Rule 131 of the Revised Rules on Evidence,[61] the burden of proof is on the party establishing his or her claim, which in this civil case is the plaintiff, petitioner herein:

> Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his or her claim or defense by the amount of evidence required by law. Burden of proof never shifts.
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> Burden of evidence is the duty of a party to present evidence sufficient to establish or rebut a fact in issue to establish a *prima facie* case. Burden of evidence may shift from one party to the other in the course of the proceedings, depending on the exigencies of the case.[62]

This revised version of the rule is similar to the previous recital of the rule under Section 1, Rule 131 of the recently amended 1989 Rules on Evidence: "Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law."[63]

Interpreting the amended provision under the 1989 Rules, we have held that in civil cases, the burden of proof rests upon the plaintiff, who is required to establish his case by a preponderance of evidence.[64] While such interpretation is of the amended rule, we find it applicable to the revised

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60 *Id.* at 232.
61 A.M. No. 19-08-15-SC.
62 Section 1, Rule 131, Revised Rules on Evidence (A.M. No. 19-08-15-SC).
63 *Id.*
64 *Sps. De Leon, et al. v. Bank of the Philippines*, 721 Phil. 839, 848 (2013).

version as the first paragraph of the revised version carries over the whole of or at least the substance of the amended rule.

Jurisprudence defines preponderance of evidence as the greater weight of evidence or evidence which is more convincing to the court as worthy of belief that that which is offered in opposition thereto.[65]

In the case at bar, as will be discussed below, petitioner's evidence was not of greater weight than that presented by respondent such as to establish its claim of actionable nuisance. We affirm the CA's finding that petitioner failed to discharge its burden of proving by a preponderance of evidence that the noise and hot air coming from respondent's blowers is an actionable nuisance.

I. First Issue: Actionable Nuisance

Article 694 of the Civil Code defines nuisance:

> A nuisance is any act, omission, establishment, business, condition of property, or anything else which: (1) Injures or endangers the health or safety of others; or (2) Annoys or offends the senses; or (3) Shocks, defies or disregards decency or morality; or (4) Obstructs or interferes with the free passage of any public highway or street, or any body of water; or (5) Hinders or impairs the use of property.[66]

The Civil Code classifies nuisances as public or private. A private nuisance has been defined as one which violates only private rights and produces damages to but one or a few persons. A nuisance is public when it interferes with the exercise of public right by directly encroaching on public property or by causing a common injury.[67]

Noise nuisance

The noise complained of by petitioner has already been recognized by this Court in *AC Enterprises* not to be a nuisance *per se*. Noise can be considered a nuisance only if it affects injuriously the health or comfort of ordinary people in the vicinity to an unreasonable extent.[68]

In *AC Enterprises*, the Court held:

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65 *BP Oil and Chemicals International Philippines, Inc. v. Total Distribution & Logistic Systems, Inc.*, 805 Phil. 244, 262 (2017).

66 Article 694, New Civil Code.

67 *AC Enterprises, Inc. v. Frabelle Properties Corporation*, *supra* note 44, at 143-144.

68 Id. at 149.

> The test is whether rights of property, of health or of comfort are so injuriously affected by the noise in question that the sufferer is subjected to a loss which goes beyond the reasonable limit imposed upon him by the condition of living, or of holding property, in a particular locality in fact devoted to uses which involve the emission of noise although ordinary care is taken to confine it within reasonable bounds; or in the vicinity of property of another owner who, though creating a noise, is acting with reasonable regard for the rights of those affected by it.
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> x x x x
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> The determining factor when noise alone is the cause of complaint is not its intensity or volume. It is that the noise is of such character as to produce **actual physical discomfort and annoyance to a person of ordinary sensibilities**, rendering adjacent property less comfortable and valuable. If the noise does that it can well be said to be substantial and unreasonable in degree, and reasonableness is a question of fact dependent upon all the circumstances and conditions. There can be no fixed standard as to what kind of noise constitutes a nuisance.[69] (Citations omitted and emphasis supplied

The reasonable use of one's property is dependent on the circumstances of each case, taking into consideration factors such as locality and character of surroundings, the nature, utility and social value of the use, the extent and nature of the harm involved, the nature, utility and social value of the use of enjoyment invaded, and the like.[70]

We assess the circumstances of this case to determine if respondent's use of its blowers and consequent emission of noise was within reasonable bounds or if such is an actionable nuisance.

Results of noise pollution tests

Throughout the course of the dispute, several noise pollution tests were conducted over the years.

The tests conducted in 1995 and 2000 by the DENR yielded the same result that the noise being emitted by the blowers of Feliza Building exceeded the allowable noise level.[71] However, witness Pascua of the DENR noted that the sounds of passing cars and other externalities were also recorded, and that the noise level already exceeded permissible limits when the blowers of Feliza Building were not in operation.[72] A similar finding was reached by MACEA in 2005.[73]

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69 *Id.* at 150-151.
70 *Id.* at 151.
71 *Rollo*, p. 129.
72 *Id.* at 48.
73 *Id.* at 130.

From 2000 to 2006, respondent introduced improvements including the installation of soundproofing materials on all air-conditioning units and the replacement of blowers and air condensers.[74] On January 2008, a test was conducted by the Makati City government, which showed that the noise emitted exceeded the allowable noise level.[75] More recently, however, on November 2018, IAA Technologies, whose services were availed of by the City Health Officer, conducted a noise pollution test late in the evening to minimize the interference of external sounds. The results of the test show that the noise produced by the blowers of Feliza Building was within the allowable noise level during daytime.[76]

There is no law or jurisprudence that provides an absolute quantifiable standard as to the noise level that would qualify a sound as an actionable nuisance. Setting an absolute quantifiable standard is almost impossible considering that noise seems inseparable from the conduct of many other necessary occupations. In *AC Enterprises*, the Court held:

> Its [Noise] presence is a nuisance in the popular sense in which that word is used, but in the absence of statute, noise becomes actionable only *when it passes the limits of reasonable adjustment to the conditions of the locality and of the needs of the maker to the needs of the listener.* **What those limits are cannot be fixed by any definite measure of quantity or quality; they depend upon the circumstances of the particular case.**[77] (Emphasis supplied; italics in the original)

Thus, the results of the noise pollution tests are not controlling, but are among the factors to be considered in our determination of nuisance.

In *Velasco v. Manila Electric Co., et al.*,[78] we were constrained to rely on quantitative tests on the record due to the vague and imprecise testimony of witnesses. We found that the noise emitted continuously day and night from the electric transformers was a nuisance considering that the noise level was much higher compared to the ambient sound of the residential locality.[79]

The noise level limits applicable to respondent are found in National Pollution Control Commission (NPCC) Memorandum Circular No. 002, Series of 1980. For areas within any center of urban living with a section used as a heavy industrial area, the maximum allowable noise level is 65 decibels during daytime.[80] Similarly, Makati City Ordinance No. 93-181

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74 *Id.* at 49-50.
75 *Id.* at 48-49.
76 *Id.* at 132-133.
77 *Supra* note 44, at 150.
78 148-B Phil. 204 (1971).
79 Id. at 215.
80 Section 78, NPCC Memorandum Circular No. 002, Series of 1980. (May 12, 1980).

provides that in areas considered primarily commercial, the maximum allowable noise level is 65 decibels during daytime.[81] The limits provided by these government bodies presumably reflect what is allowable in achieving the prevention and control of environmental pollution pursuant to Presidential Decree No. 984, which expressly vested the NPCC with the power to set up ambient standards and recognized that local governments may set up higher standards.[82] Thus, the noise level limits may reflect what is acceptable to a person of ordinary sensibilities.[83]

However, while these provisions set noise level limits and provide for the abatement of the noise pollution or possible liability for exceeding noise level limits,[84] there is no law that states that violation of the noise level limits would result in the automatic finding of nuisance. Indeed, whether or not the noise level of the blowers of Feliza Building comply with or exceed the noise level limits imposed by the NPCC or Makati City government is not controlling in a determination of nuisance. In *Velasco*, wherein we found the existence of nuisance, apart from the results of the noise pollution tests, it was also proven that the complainant's ailments were caused by his inability to sleep due to the incessant noise with consequent irritation coming from the transformers that were continuously operational day and night.[85]

In the case at bar, several noise pollution tests were conducted and presented to the lower court as evidence. Of the noise pollution tests conducted, most indicated that the noise level of the blowers exceeded 65 decibels, while the recent one conducted on November 22, 2008 yielded a result of 61.3 decibels. The noise pollution tests have conflicting findings, but we consider the November 22, 2008 test to be most reliable.

Petitioner presented evidence on multiple noise pollution tests conducted, with results indicating that the noise level of the blowers exceeded 65 decibels, while respondent presented evidence of the noise pollution tests conducted on November 13, 2008 and November 22, 2008.

Petitioner presented evidence on multiple tests conducted over a long period of time from 1995 to January 2008. Notably these tests did not follow a standardized methodology, but instead varied as to equipment, administrating body, testing personnel, and schedule. In fact, one of the tests conducted in 2002 involved no special equipment other than the physical senses of eyes and ears.[86] Aside from the methodology employed, the tests

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81 Section 2(b), Makati City Ordinance No. 93-181.

82 Section 6(i), Presidential Decree No. 984.

83 *AC Enterprises, Inc. v. Frabelle Properties Corporation*, *supra* note 44, at 150.

84 NPCC Memorandum Circular No. 002, Series of 1980. (May 12, 1980); Makati City Ordinance No. 93-181.

85 *Supra* note 78, at 215.

86 *Rollo*, pp. 130-131.

cannot accurately reflect the noise level of Feliza Building due to the presence of externalities such as the passing vehicles, commuters, construction, and sounds from other nearby building such as the Thailand Embassy. Even petitioner's own witness Pascua admitted that the noise of other externalities were also recorded in the noise pollution tests, and that the noise level already exceeded permissible limits when the blowers of Feliza Building were not in operation.[87] Thus indicating that the blowers of Feliza Building may in fact be within allowable limits in the absence of the noise from the externalities.

Of the noise pollution tests conducted, we find the November, 13 2008 and November 22, 2008 noise pollution tests presented by respondent to be most reliable for several reasons. First, the tests were conducted by an independent entity, IAA Technologies, which was deputized by the Makati City Health Department.[88] Second, IAA Technologies is a sound expert using equipment designed for noise pollution testing and not merely relying on physical senses. Third, the tests were conducted late in the evening to minimize the recording of external sounds that are present during the daytime, thus capturing with more accuracy the noise level of the blowers. Fourth, these were the most recent tests conducted and submitted to the trial court, and the results had not been subsequently negated. Fifth, aside from the submission of the reports, the personnel that conducted the tests presented his testimony on the conduct and results thereof, and was able to justify the reliability of the tests.[89]

The report on the November 13, 2008 and November 22, 2008 noise pollution test shows that the noise level of the blowers of Feliza Building is at 61.3 and 63.4 decibels, respectively,[90] which is below the 65-decibel limit provided under Makati City Ordinance No. 93-181.[91] We observe that technological advancements, heightened commercial activity, and over crowdedness in the Makati City Business District has increased through the years, while the 65-decibel limit has not been updated since 1980 and 1993 to reflect the evolving nature of the locality wherein more noise is expected with increased activity. Nevertheless, respondent still exerted reasonable efforts in maintaining an acceptable noise level that meets the limits provided under NPCC Memorandum Circular No. 002, Series of 1980 and Makati City Ordinance No. 93-181. While compliance with noise level limits is not tantamount to the absence of nuisance, we find that being within allowable limits supports respondent's position that there is no actionable nuisance in this case considering it was acting within the limitations of what the law itself views as permissible.

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87 *Id.* at 48.
88 *Id.* at 50.
89 *Id.* at 132-133.
90 *Id.* at 163.
91 *Id.*

Issuance of permits and licenses by the Makati City government

Petitioner argues that the CA erred in giving weight to the permits and licenses issued by the Makati City government to respondent.[92] We agree with petitioner that the issuance of permits and licenses should not be given significant weight in the determination of nuisance. However, we find that the CA did not base its ruling on such fact alone.[93]

The act of granting permits and licenses is an exercise different and separate from and notably does not even require a determination of nuisance. More importantly, the Makati City government cannot through the exercise of granting permits and licenses determine nuisance in light of our pronouncement that local government units do not have power to declare a particular thing as a nuisance unless such is a nuisance *per se*. This matter is to be resolved by the courts in the ordinary course of law.[94] Thus in *AC Enterprises*, we held:

> **A finding by the LGU that the noise quality standards under the law have not been complied with is not a prerequisite nor constitutes indispensable evidence to prove that the defendant is or is not liable for a nuisance and for damages**. Such finding is merely corroborative to the testimonial and/or other evidence to be presented by the parties. The exercise of due care by the owner of a business in its operation does not constitute a defense where, notwithstanding the same, the business as conducted, seriously affects the rights of those in its vicinity.[95] (Citation omitted and emphasis supplied)

Even if respondent's commercial activities in Feliza Building are presumed lawful considering the grant of permits and licenses by the Makati City government, it is to be noted that commercial activities which are lawful in themselves may become nuisances if they are so offensive to the senses that they render the enjoyment of life and property uncomfortable.[96]

In *Coventry v. Lawrence*, the United Kingdom (UK) Supreme Court ruled on the effect of a grant of planning permission in the finding of nuisance, to *wit*:

> The grant of planning permission for a particular development does not mean that that development is lawful. All it means is that a bar to the use imposed by planning law, in the public interest, has been removed. Logically, it might be argued, the grant of planning permission for a particular activity in 1985 or 2002 should have no more bearing on a claim

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92 *Id.* at 54-55.
93 *Id.* at 71.
94 *AC Enterprises, Inc. v. Frabelle Properties Corporation*, *supra* note 44, at 149.
95 *Id.* at 151.
96 *Id.* at 150.

> that that activity causes a nuisance than the fact that the same activity could have occurred in the 19th century without any permission would have had on a nuisance claim in those days.
>
> Quite apart from this, it seems wrong in principle that, through the grant of a planning permission, a planning authority should be able to deprive a property-owner of a right to object to what would otherwise be a nuisance, without providing her with compensation, when there is no provision in the planning legislation which suggests such a possibility. x x x[97]

Guided by the foregoing, we find the grant of permits and licenses by the Makati City government, while corroborative to the other evidence presented by the parties,[98] to be of little weight in our determination of nuisance.

Locality and character of surroundings

This Court has found that the reasonable use of one's property is dependent as well on the locality and character of surroundings.[99] Guided by foreign jurisprudence, we now consider the locality and character of surroundings of the properties involved.

In *Coventry*, the character of locality factor was determinative on the the court's assessment of nuisance. The court emphasized that the starting point in a nuisance claim is the "proposition that the defendant's activities are to be taken into account when assessing the character of the locality."[100] The injurious effect of a defendant's activity would depend greatly on the circumstances of the locality where it actually occurs.[101]

Feliza Building and Frabella I Condominium are located in the bustling Legaspi Village at the heart of the Makati Central Business District.[102] In any urban and commercial area, noise is expected from the business activities, passing vehicles, construction and development, and residents and commuters. Despite the efforts made to minimize the recording of external noise in the noise pollution tests conducted on Feliza Building, still some noise was recorded and contributed to the resulting reported noise levels.

The noise entering Frabella I Condominium is not only from the blowers of Feliza Building, but a combination of noise naturally expected from a very busy area where commercial activities are prevalent. While

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97 *Coventry v. Lawrence*, 2014 UKSC 13 (2014).
98 *AC Enterprises, Inc. v. Frabelle Properties Corporation*, *supra* note 44, at 151.
99 *Id.*
100 *Supra* note 97.
101 *Id.*
102 *Rollo*, pp. 44-45.

noise is expected given the locality and character of the surroundings, it must not be more than those ordinarily expected. Otherwise, it shall be considered a nuisance. We held in *AC Enterprises*:

> Persons who live or work in thickly populated business districts must necessarily endure the usual annoyances and of those trades and businesses which are properly located and carried on in the neighborhood where they live or work. **But these annoyances and discomforts must not be more than those ordinarily to be expected in the community or district, and which are incident to the lawful conduct of such trades and businesses.** If they exceed what might be reasonably expected and cause unnecessary harm, then the court will grant relief.[103] (Citation omitted and emphasis supplied)

Hence, as we consider the locality and character of the Makati Central Business District in which the properties are situated, we must determine if the sounds from the blowers of Feliza Building are ordinarily to be expected in the district and lawful to the conduct of respondent's business or if they exceed what might be reasonably expected and cause unnecessary harm.

We find that the sounds from the blowers of Feliza Building are ordinarily to be expected in the Makati Central Business District and are lawful to the conduct of respondent's business. The use of air-conditioning units in commercial and office spaces, such as those in Feliza Building, is part of ordinary local business conditions and is expected in the commercial rental industry, especially considering that the Philippines is a tropical country with higher levels of heat intensity. Moreover, considering the limited available real estate in Makati Central Business District, buildings are closely located to each other; in this case, only 12 meters of road separate Frabella I Condominium and Feliza Building, thus sounds coming from buildings in the proximity are expected to be heard.

The sounds complained of do not exceed what might be reasonably expected and do not cause unnecessary harm. An illustration of unreasonable use of property can be found in *Rattigan v. Wile* wherein the United States (US) court found that the defendant's placement of items near the plaintiffs' property was intended to harass his neighbors, and although the said placement served a mixed purpose, defendant could have still accomplished his goals without undue hardship upon plaintiffs.[104] As compared to the defendant in *Rattigan*, the respondent in this case did not intentionally cause harm or undue hardship to petitioner, but acted within reasonable expectations and even made efforts to minimize any disturbance its blowers might have been causing.

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103 *Supra* note 44, at 151.

104 *Rattigan v. Wile*, 445 Mass. 850 (2006).

In *Kasper v. H.P. Hood & Sons, Inc.*, the US court emphasized that the character of the locality is a circumstance of great importance in a determination of noise nuisance: "That a noise is disagreeable and disturbing to ordinary people is not enough. It must also be unreasonable under all the circumstances. The character of the locality is a circumstance of great importance."[105] The court did not find nuisance holding that the plaintiff's property was located in an industrial area, which is subject to conditions other than defendant's business that tend to make the vicinity less desirable for residential purposes, and that the defendant conducted its business without any more noise than is reasonably necessary for its business, even building a high fence to reduce the noise.[106]

Applying the doctrine in *Kasper*,[107] we similarly find the absence of nuisance considering the character and locality of the surroundings of the properties involved. The noise level of the Makati Central Business District is expected to be higher than other areas considering the magnitude of activity therein. It has been established that in conducting its business leasing commercial and office spaces, respondent did not act to make the vicinity less desirable, nor did it cause any more noise than that which was reasonably necessary to operate its air-conditioning units.

Injurious effect in the health or comfort of ordinary people

Ultimately, the determining factor is that the noise is of such character as to produce **actual physical discomfort and annoyance to a person of ordinary sensibilities.**[108]

In *Velasco*, we ruled that the noise from defendant's substation transformers was a nuisance, being of a much higher level than the ambient sound of the locality and having aggravated plaintiff's medical condition. We reached this decision finding that actual physical discomfort and annoyance was proven through a host of expert witnesses and voluminous medical literature, laboratory findings and statistics of income.[109]

In this case, petitioner only presented one tenant to testify on the annoyance she experienced with the noise and heat emanating from the blowers of Feliza Building. Tenant-witness Lee testified that she is a tenant of Frabella I Condominium with her unit facing the Feliza Building, and because of the noise and hot air that she observed to be coming from the blowers of Feliza Building, she never opened her balcony door and operated

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105 *Kasper v. H.P. Hood & Sons, Inc.*, 291 Mass. 24 (1933).
106 *Id.*
107 *Id.*
108 *AC Enterprises, Inc. v. Frabelle Properties Corporation*, *supra* note 44, at 150; *Velasco v. Manila Electric Co.*, *supra* note 78, at 210.
109 *Velasco v. Manila Electric Co.*, *supra* note 78, at 216.

her air-conditioning units most of the time.[110] Petitioner argues that tenant-witness Lee represents the other tenants of Frabella I Condominium, but did not show any proof as to her authority. Instead, petitioner presented complaint letters that it allegedly received from Frabella I Condominium tenants.[111] However, these letters deserve scant consideration as petitioner failed to prove the due execution and authenticity thereof. Thus, with only the testimony of sole tenant-witness Lee, petitioner failed in establishing how there was actual physical discomfort and annoyance to a person of ordinary sensibilities.[112]

We agree with petitioner that there is no requirement for every tenant to be offended before nuisance can be actionable.[113] The number of witnesses is not controlling in a determination of nuisance. In *Velasco*, even if several witnesses testified on their annoyance with the sounds from defendant's transformers, we found that the testimonies of the witnesses on the intensity of the sound were vague and imprecise, failing to give a definite idea of the intensity of the sound complained of.[114]

However, contrary to petitioner's assertion, we find that the CA did not base its ruling on the mere fact that the former only presented one tenant-witness. We agree with the CA's finding:

> "[I]t was not shown by [petitioner] that the perception, sensibility and lifestyle of tenant-witness Ma. Cristina Lee represented the normal and ordinary level of sensitivity and habits of living of each of the other tenants of Frabella who had supposedly been offended also by the noise and hot air from Feliza building."[115]

Petitioner failed to prove that tenant-witness Lee was of ordinary sensibilities, and that her sentiments were representative of the community. We do not agree with petitioner's assertion that tenant-witness Lee is presumed to be of ordinary sensibilities, as this is an evidentiary matter that cannot be presumed but must be proven by petitioner in support of its claim of nuisance.

Moreover, we find that petitioner failed to prove that the noise of respondent's blowers injuriously affects the health or comfort of ordinary people in the vicinity to an unreasonable extent.[116] Apart from the sentiments of tenant-witness Lee, no other evidence was provided to show how the

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110 *Rollo*, pp. 129.
111 *Id.* at 52-53.
112 *AC Enterprises, Inc. v. Frabelle Properties Corporation*, *supra* note 44, at 150; *Velasco v. Manila Electric Co.*, *supra* note 78, at 218-219.
113 *Rollo*, p. 16.
114 *Supra* note 78, at 212.
115 *Rollo*, p. 67.
116 *AC Enterprises, Inc. v. Frabelle Properties Corporation*, *supra* note 44, at 150.

noise of respondent's blowers had adversely affected the community. The complaint of tenant-witness Lee that she had to keep her balcony door closed and air-conditioning units operational is not an unreasonable burden to an ordinary person though it might be peculiarly bothersome to one.

The sentiments and experiences of tenant-witness Lee cannot be presumed to be shared by the other tenants in the community so as to establish that ordinary persons living in that community would regard the noise to be a nuisance. If ordinary persons living in the community would not regard the sound to be a nuisance, there can be no actionable nuisance even if the idiosyncrasies of a particular member thereof, in this case tenant-witness Lee, may make the sound unendurable to her.[117]

In determining what is reasonably acceptable and what is invasive to a community, the court in *Rattigan* appreciated the evidence that being a residential community, there was implicit intolerance of the activities of defendant. Moreover, the plaintiff presented expert testimony that showed how one who might otherwise have rented Edgewater to decline to do so because of defendant's activities.[118] In the case at bar, no such evidence was presented to show how respondent's activities affected the rental opportunities and value of Frabella I Condominium. It is also worth noting that petitioner's sole tenant-witness Lee continued to reside in and did not vacate Frabella I Condominium despite the alleged discomfort caused to her by the noise and hot air.[119] Neither did petitioner present any evidence of loss of rental opportunities and value due to respondent's operation of blowers, other than observations from its own personnel. In fact, petitioner's Vice President, witness Albutra, testified that she observed the noise from the blowers as early as when the Frabella I Condominium was being constructed.[120] Despite such observations of noise, petitioner successfully sold and rented out units, thus negating petitioner's assertion of the detrimental effects of respondent's blowers on the rental opportunities and value of Frabella I Condominium.

We are further guided by *Stevens v. Rockport Granite Company*, wherein the US Court emphasized that the number of people concerned by the noise should be considered in reaching a conclusion as to the standard, which is what ordinary people, acting reasonably, have a right to demand in the way of health and comfort under all circumstances:

> It is not enough that a person of peculiar temperament, unusual sensibilities or weakened physical condition, may be affected. Nor is a noise protected if persons of exceptional strength and robustness, or whose

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117 *Rattigan v. Wile*, *supra* note 104.
118 *Id.*
119 *Rollo*, p. 129.
120 *Id.* at 128-129.

> faculties have become benumbed by close business or other experience with it, are not disturbed. **The pertinent inquiry is whether the noise materially interferes with the physical comfort of existence, not according to exceptionally refined, uncommon, or luxurious habits of living, but according to the' simple tastes and unaffected notions generally prevailing among plain people. The standard is what ordinary people, acting reasonably, have a right to demand in the way of health and comfort under all the circumstances. The number of people concerned by the noise and the magnitude of the industry complained of are both elements** entitled to consideration in reaching a conclusion as to the fact.[121] (Emphasis and underscoring supplied)

Thus, while the number of tenant-witnesses is not in itself controlling on the finding of nuisance, it is relevant in establishing the standard acceptable to ordinary people. On the basis of the testimony of tenant-witness Lee alone, it is difficult to accept that her peculiar temperament is reflective of that of ordinary people. We find petitioner's evidence to be lacking not because it had presented only one tenant-witness to testify on the effects of the noise, but because its evidence as a whole failed to establish how the noise from the blowers is harmful to the health or comfort of ordinary people.

Other harms raised

Petitioner claims that the noise and hot air from respondent's blowers had caused some tenants to vacate Frabella I Condominium and decreased the rental value by 25% to 30%.

In *Rattigan*, the court ruled there was a nuisance and that damages were ascertainable because it found the residential community intolerant of defendant's activities. Its finding was supported by expert opinion that one who might have otherwise rented in the locality would probably decline to do so because of defendant's activities.[122]

In this case, other than its bare assertions, petitioner failed to adduce any reliable evidence in support of its claim of lost rental opportunities and decrease in income. As appreciated by the CA, "[t]here is no testimonial or documentary evidence stating that the 21% vacancies, more or less, were the result of cancellation of occupancy agreements as a consequence of the noise and hot air produced by Feliza Building."[123]

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121 *Stevens v. Rockport Granite Company*, 216 Mass. 486 (1914).
122 *Supra* note 104.
123 *Rollo*, p. 65.

Further, even assuming the decrease in rental value had been proven, petitioner still failed to prove how such decrease was caused by respondent's operation of its blowers.

In any case, even assuming petitioner proved there was a decrease in rental value attributable to respondent's operation of its blowers, that fact alone would not prove the nuisance. We are guided by the US Court's pronouncement in *Tortorella v. H. Traiser & Company*, wherein it held: "A failure to secure or to retain a single tenant because of the existence of noise would, in strictness, show a loss of rental value, but this falls far short of proving the noise to be unreasonable in extent."[124]

Petitioner also claims that the noise produced by respondent's blowers is harmful to the community. It relied on the testimony of its witness Albayda, a sanitation inspector, who had testified that based on his experience and training, the daily continuous intense noise produced by the blowers of Feliza Building may result in unhealthy consequences to people.[125] However, other than witness Albayda's observations as a sanitation inspector, no medical evidence or expert testimony was presented to prove the existence of the harm allegedly caused by the noise of the blowers.

Another claim we address is petitioner's allegation that the baby of a certain Mr. and Mrs. Taku Himeno (*Mr. and Mrs. Himeno*), one of the tenants of Frabella I Condominium, suffered a seizure due to the sounds coming from Feliza Building, as testified by witness Albayda.[126] Albayda is a sanitation inspector with no medical knowledge or expertise to be a reliable witness in proving the connection between the sound and the baby's seizure. Moreover, he himself did not witness to seizure, but is presenting hearsay on what might have happened to the baby of Mr. and Mrs. Himeno. The fact that Mr. and Mrs. Himeno did not testify or file any complaint against respondent after this alleged incident casts doubt on whether respondent's operation of its blowers really caused such harm.

In *Velasco*, this Court found that the noise caused by defendant's transformers resulted in an actual harm to plaintiff's medical condition because of the medical evidence and expert testimony presented to prove the connection between the incessant noise caused by defendant and the deteriorating health condition of plaintiff. Clearly, this is not the case here as no medical evidence or expert testimony was presented. Neither was there any evidence presented from those with direct knowledge on the alleged harms caused by the noise of the blowers.

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124 *Tortorella v. H. Traiser & Company*, 284 Mass. 497 (1933).
125 *Rollo*, p. 19.
126 *Id.*

Further, in *Tortorella*, the court did not find nuisance even if it recognized that the noise was annoying and disturbing to the tenant of plaintiff, tending to cause irritability and headaches and affecting sleep, and had affected rental value to some extent. The court ruled that there was no nuisance because no one on the subject premises had suffered materially from the noise in comfort or health, and the operation of the factory did not unreasonably interfere with the comfort, health or property of the plaintiff.[127] In the absence of proof of material suffering in comfort or health, we are constrained to rule that there is no actionable nuisance.

Therefore, in light of the foregoing discussion and after a careful consideration of the facts and applicable law, We rule in favor of respondent and affirm the findings of the CA that there was no actionable nuisance caused by respondent's operation of its blowers.

Thus, in the absence of proof of material suffering in comfort or health, we do not find the sound of the blowers to be a nuisance.

II. Award of Damages and Attorney's Fees

The CA correctly deleted the award of damages, there being no injury caused by respondent to petitioner in the absence of nuisance. Respondent cannot be made to suffer for the lawful enjoyment of its property, petitioner having failed to prove nuisance.

Petitioner failed to prove injury suffered due to respondent. As we held in *Sps. Custodio v. Court of Appeals*,[128] damage without wrong does not constitute a cause of action, to *wit*:

> To warrant the recovery of damages, there must be both a right of action for a legal wrong inflicted by the defendant, and damage resulting to the plaintiff therefrom. Wrong without damage, or damage without wrong, does not constitute a cause of action, since damages are merely part of the remedy allowed for the injury caused by a breach or wrong.[129]

Even assuming petitioner suffered some loss, as it had failed to prove nuisance, there is no injury caused by respondent to petitioner to entitle the latter to an award of damages. In situations of *damnum absque injuria* or damage without injury, wherein the loss or harm was not the result of a violation of legal duty, there is no basis for an award of damages. There must first be a breach of duty and imposition of liability before damages

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127 *Tortorella v. H. Traiser & Company*, 284 Mass. 497 (1933), *supra* note 124.
128 323 Phil. 575 (1996).
129 *Id.* at 585.

may be awarded.[130] At most, we can consider this to be a case of *damnum absque injuria*, for which petitioner is not entitled to an award of damages.

In *Tortorella*, the court did not award damages to the petitioner that had similarly claimed loss of rental value because there was no nuisance found in the case.[131] In the case at bar, there being no actionable nuisance, respondent was not in breach of duty but in the lawful exercise of its ownership rights, and therefore, there is no basis to sustain an award of damages in favor of petitioner.

Petitioner is not entitled to the temperate and exemplary damages and attorney's fees it claims.

Temperate damages are only awarded by virtue of the wrongful act of a party[132] when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty.[133] Exemplary damages are awarded when the act of the offender is attended by bad faith or done in wanton, fraudulent, or malevolent manner.[134] As discussed, petitioner failed to prove nuisance, thus there is no wrongful act to serve as basis for an award of temperate or exemplary damages in its favor.

As regards attorney's fees, we similarly find petitioner not entitled because the instant case does not fall under any of the grounds set forth in Article 2208 of the Civil Code.

In view of the foregoing, we find no cogent reason to disturb the findings of the CA.

WHEREFORE, the petition is **DENIED**. The June 19, 2018 Decision and the February 18, 2019 Resolution of the Court of Appeals in CA-G.R. CV No. 105817 are hereby **AFFIRMED**.

SO ORDERED.

DIOSDADO M. PERALTA
Chief Justice

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130 *Id.*
131 *Supra* note 124.
132 *Laynesa, et al. v. Spouses Uy*, 570 Phil. 516, 533 (2008).
133 Article 2224, New Civil Code.
134 *Supra* note 132.

WE CONCUR:

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Chief Justice