SCHRODINGER'S NUISANCE: UPDATE IN THE JURISPRUDENCE ON NUISANCE – FRABELLE PROPERTIES CORP. V. AC ENTERPRISES, INC.*

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ABSTRACT

This Comment presents an update in the jurisprudence on nuisance. From the introduction of the concept of nuisance through early laws and jurisprudence, until the development of a statutory definition of nuisance under the New Civil Code, the legal understanding of what precisely constitutes a nuisance has significantly varied. This is perhaps due to the manner in which nuisance was defined—its definition having been described as comprehensive by the Supreme Court, owing to the concept's elastic design by nature. Notably, it is virtually impossible to statutorily define each and every nuisance because of the unique and evolving genetics, personality, and preferences of a person, which are among the factors that affect one's appreciation of a nuisance. On November 3, 2020, the Supreme Court promulgated *Frabelle Properties Corp. v. AC Enterprises, Inc.*, penned by then Chief Justice Diosdado M. Peralta. The case is a significant update in jurisprudence because it consolidated and identified guidelines for the bench and bar in the determination of noise nuisance. This case tempered the elasticity of the concept of nuisance by defining its standards with more particularity.

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I. INTRODUCTION

Remote work and distance learning have become the norm rather than the exception in the daily lives of Filipinos amid the new normal brought about by the COVID-19 pandemic. This drastic change in the way people work and learn has posed its own set of challenges for remote workers and distant learners. Majority of Filipinos have experienced, in one way or another, certain distractions while engaging in their online work or learning platform by their neighbors' either loud off-key karaoke session, barking dogs, or the random bickering they get involved in. It is during these moments that one may wonder whether redress can be sought to achieve some level of peace. In this light, the essential question would be, do these everyday occurrences qualify as nuisance under Philippine law?

Ascertaining whether or not an act qualifies as a nuisance is difficult. Nuisance has historically been intended to be broad and general for it to serve as a "catch-all" term for undefined tortious acts and omissions.[1] Nuisance as defined in the Philippine legal system is a very elastic concept to the point wherein any conceivable action, depending on how it is framed, may qualify as a nuisance.

In the majority of nuisance cases and, similar to Schrodinger's cat still being within its box, the elasticity of the definition of nuisance and what qualifies as the same meant that it requires judicial interpretation to measure it before one can assess with certainty if there is nuisance. This elasticity creates a spacious room for discretion where scrupulous litigants file groundless nuisance claims against others. Finally, the elasticity of nuisance, coupled with its broad coverage of factual circumstances that can comprise it, meant that its determination is highly subjective to the one adjudicating whether an act or omission qualifies as a nuisance.

Historically, various tests introduced by legal philosophers have guided practitioners in deciding whether an act or omission is a nuisance. Justice Oliver Wendell Holmes, Jr. proposed that the measuring stick used to determine whether an act or omission qualifies as a nuisance is whether the act or omission goes beyond what can be expected by our experiences from being an average reasonable man.[2] Meanwhile, Justice Benjamin N. Cardozo,

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[1] Howard Oleck, *Nuisance in a Nutshell*, 5 CLEV-MARSHALL L. REV. 148 (1956).

[2] Willian Lundquist, *Oliver Wendell Holmes and External Standards of Criminal and Tort Liability: Application of Theory on the Massachusetts Bench*, 28 BUFF. L. REV. 607 (1979).

in *MacPherson v. Buick Motor Co.*, emphasized the importance of the actor's duty and the foreseeability of the injury for nuisance to attach.[3]

In view of the conundrum presented by the elasticity of nuisance, this Comment seeks to provide a clear standard for the various circumstances that should be considered in determining how an act or omission can qualify as a nuisance. It examines the recent jurisprudence of the Supreme Court in *Frabelle Properties Corp. v. AC Enterprises, Inc.*, penned by Chief Justice Diosdado M. Peralta and promulgated on November 3, 2020. The case consolidated and identified guidelines in the determination of noise nuisance. In so doing, it tempered the elasticity of the concept of nuisance by defining its standards with more particularity.

II. EVOLUTION OF THE CONCEPT OF NUISANCE

A. Laws Prior to the New Civil Code

The concept of nuisance was recognized in early laws granting particular government agencies the power to define, declare, and abate nuisances.

The Administrative Code or Act No. 2657 is the first codification of the concept of nuisance in Philippine law. Under Section 750, the Philippine Health Service may promulgate regulations containing provisions on the abatement of nuisance. Meanwhile, pursuant to Section 794, the District Health Officer shall have the power to institute all proceedings necessary to abate nuisances. In addition to this, according to Section 809, the Municipal Board of Health shall have the power to abate nuisances endangering public health. Section 820, on the other hand, provides that the president of a sanitary division shall have the power to abate any nuisance endangering the public health, while Section 834 authorizes the Director of Health for the City of Manila to define, declare and prohibit nuisances dangerous to the public health. Under Sections 1627 and 1632, the Collector of Internal Revenue may regulate nuisances by revoking privileges granted to liquor or tobacco businesses, and by ordering the removal of signs, signboards or billboards that are offensive to sight. Section 2188 vests the power to the municipal council to declare and abate nuisances. Under Section 2331, the township council shall order the removal of nuisances and causes of disease, whereas Section 2416 gives the municipal board the power to declare, prevent, and provide for the abatement of nuisances. Pursuant to Sections 2258, 2338, 2510, 2533 and 2611, a liquor license may be revoked when business is conducted in any way

[3] 217 N.Y. 382, 111 N.E. 1050 (1916).

to become a public nuisance. Under Section 2533, the city council shall have the power to declare, prevent, and abate nuisances. Lastly, Section 2611 grants the power to the municipal council to declare, prevent, and abate nuisances.[4]

When the Revised Administrative Code was enacted in 1917, additional regulatory powers over nuisances were extended to the government officials concerned. Under Section 499, military authorities had the right to abate nuisance on any public lands reserved for military purposes.[5]

Notably, the Administrative Code did not provide a definition of nuisance, but merely granted regulatory powers to certain government offices. It also impliedly categorized certain businesses or activities as nuisances. For example, it mentions signs, signboards, or billboards offensive to sight,[6] and the use of liquor license when business is conducted in any way to become a public nuisance.[7] Other early laws also provided for the characterization of certain nuisances as defined by law. Act No. 3352 characterizes certain low areas that "admit or cause the formation on the surface thereof of stagnant or foul water" as a nuisance and a menace to the public health.[8] Act No. 2159 considers as nuisance any motor vehicle that emits smoke in unreasonable or annoying quantities while the same is passing through the streets of any city of the thickly inhabited portions of any municipality or barrio in any other place where the same shall constitute a nuisance.[9] Commonwealth Act No. 659 deems certain businesses and professionals granted a license by the city council as possibly constituting a nuisance.[10] These have been recognized by the Supreme Court as statutory nuisances[11] or those that are nuisances because of the characterizations made by law.

After the Administrative Code, several charters creating local government units were enacted.[12] These city and municipality charters commonly provided for the grant of powers to declare, abate, or otherwise regulate nuisances.

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[4] Act No. 2657 (1916).

[5] Act No. 2711 (1917).

[6] Act No. 2657, §§ 1627, 1632.

[7] §§ 2258, 2338, 2510, 2533, 2611.

[8] Act No. 3352 (1927), § 2.

[9] Act No. 2159 (1912), § 36.

[10] Com. Act No. 659 (1941), § 3.

[11] Churchill v. Rafferty [hereinafter "*Churchill*"], 32 Phil. 580 (1915).

[12] *See, e.g.*, Com. Act No. 502 (1939). The Charter of Quezon City; Com. Act No. 58 (1936). The Charter of the City of Cebu; Com. Act No. 51 (1936). The Charter of the City of Davao.

B. Jurisprudence Prior to the New Civil Code

Philippine jurisprudence recognized the concept of nuisance before the enactment of the New Civil Code. While there was no law that defined it, the State's police power to regulate the same has been upheld in earlier decisions of the Supreme Court.[13] The police power of the State includes its authority to regulate private businesses in a way that the same would not constitute a public nuisance. With regard to the regulation of nuisance by the State, such exercise of police power covers "not only public health and safety but also the public welfare, protection against impositions, and generally the public's best interest."[14]

In *Iloilo Ice and Cold Storage Co. v. Municipal Council of Iloilo*,[15] the Supreme Court defined a nuisance citing foreign authorities:

> A nuisance is, according to Blackstone, "[a]ny thing that worketh hurt, inconvenience, or damages." They arise from pursuing particular trades or industries in populous neighborhoods; from acts of public indecency, keeping disorderly houses, and houses of ill fame, gambling houses, etc.[16]

Other than this borrowed definition from foreign authorities, there is no other definition of nuisance in Philippine jurisprudence. Instead, the Supreme Court characterized nuisances based on the effects produced by or the nature of the subject matter to be abated. A survey of the earlier jurisprudence of the Supreme Court would show that there are common considerations in the determination of nuisance.

First, the use of property may become a nuisance if it affects public health, morals, comfort, or convenience.[17] This was discussed in *Seng Kee & Co. v. Earnshaw*:

> Police regulations are not a taking under the right of eminent domain or a deprivation of property without due process of law.

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[13] United States v. Pompeya [hereinafter "*Pompeya*"], 31 Phil. 245 (1915); *Churchill*, 32 Phil. 580; United States v. Jesus [hereinafter "*Jesus*"], 31 Phil. 218 (1915); United States v. Ling Su Fan [hereinafter "*Ling Su Fan*"], 10 Phil., 104 (1908); United States v. Toribio, [hereinafter "*Toribio*"] 15 Phil. 85, 26 January 1910; People v. Pomar [hereinafter "*Pomar*"], 46 Phil. 440, (1924); Seng Kee & Co. v. Earnshaw [hereinafter "*Seng Kee*"], 56 Phil. 204 (1931).

[14] *Ling Su Fan*, 10 Phil. at 115.

[15] 24 Phil. 471 (1913).

[16] *Id.* at 474. (Citations omitted.)

[17] *Pompeya*, 31 Phil. 245, *Churchill*, 32 Phil. 580; *Jesus*, 31 Phil. 218; *Ling Su Fan*, 10 Phil., 104; *Toribio*, 15 Phil. 851; *Pomar*, 46 Phil. 440; *Seng Kee*, 56 Phil. 204.

> Thus, a prohibition on the use of property, for purposes that are declared by valid legislation to be injurious to the health, morals, or safety of the community cannot, in any sense, be deemed a taking or an appropriation of property for the public benefit, as such legislation does not disturb the owner in the control or use of his property for lawful purposes, nor restrict his right to dispose of it. It is only a declaration by the state that its use by any one for certain forbidden purposes is prejudicial to the public interests, the exercise of the police power by the destruction of the property, which is itself a public nuisance, or the prohibition of its use in a particular way, whereby its value becomes depreciated, is very different from taking property for public use, or from depriving a person of his property without due process of law.[18]

Second, the proper ministration to the senses of sight, hearing, and smell is necessary in order not to constitute a nuisance.[19] This was discussed in *Churchill v. Rafferty*:

> Without entering into the realm of psychology, we think it quite demonstrable that sight is as valuable to a human being as any of his other senses, and that the proper ministration to this sense conduces as much to his contentment as the care bestowed upon the senses of hearing or smell, and probably as much as both together. Objects may be offensive to the eye as well as to the nose or ear. Man's esthetic feelings are constantly being appealed to through his sense of sight.[20]

Third, the location and population density of areas are factors in the determination of nuisance.[21] This was discussed in *De Ayala v. Barretto*:

> All that can be required of men who engage in lawful business is that they shall regard the fitness of locality. In the residence sections of a city, business of no kind is desirable or welcome. On the other hand, one who becomes a resident of a trading or manufacturing neighborhood, or who remains, while in the march of events a residence district gradually becomes a trading or manufacturing neighborhood, should be held bound to submit to the ordinary annoyances, discomforts and injuries which are fairly incidental to the reasonable and general conduct of such business in his chosen neighborhood. The true rule would be that any discomfort or injury

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[18] *Seng Kee*, 56 Phil. at 214, *quoting* Mugler v. Kansas, 123 U.S. 623.
[19] *Churchill,* 32 Phil. 580; De Ayala v. Barretto, 33 Phil. 538 (1916).
[20] *Churchill,* 32 Phil. at 608.
[21] *Id.*

> beyond this would be actionable; anything up to that point would not be actionable.[22]

Early laws and jurisprudence demonstrate the flexibility of the concept of nuisance. The authorities granted by law the power to define or determine nuisance have the discretion to assess the factors using their individual litmus tests. As early as 1916, in the case of *Ayala*,[23] the Supreme Court discussed the lack of rigidity in the concept of nuisance, citing *Stevens v. Rockport Granite Co.*: "The law of nuisance affords no rigid rule to be applied in all instances. It is elastic. It undertakes to require only that which is fair and reasonable under all circumstances."[24] The elasticity of the rules and the subjective nature of "that which is fair and reasonable" pose greater challenges in formulating an objective definition and characterization of nuisance.

C. New Civil Code and Jurisprudence

The concept of nuisance was codified in 1949 with the enactment of the New Civil Code of the Philippines. Nuisance is defined in Article 694 as follows:

> A nuisance is any act, omission, establishment, business, condition of property, or anything else which:
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> (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.

This legal definition of nuisance allows "anything else" to constitute the same, adhering to the elastic nature of nuisance. The concept of nuisance has also been described as comprehensive by the Supreme Court in *Cruz v. Pandacan Hiker's Club, Inc.*:[25]

> But other than the statutory definition, jurisprudence recognizes that the term "nuisance" is so comprehensive that it has been applied to almost all ways which have interfered with the rights of

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[22] *Ayala,* 33 Phil. at 540, *quoting* Eller v. Koehler, 68 Ohio St. 51.
[23] *Id.*
[24] *Id.* at 541 *citing* Stevens v. Rockport Granite Co. 216 Mass. 486 (1914).
[25] [Hereinafter "*Cruz*"], G.R. No. 188213, 778 SCRA 385, Jan. 11, 2016.

> the citizens, either in person, property, the enjoyment of his property, or his comfort.[26]

The codification of a definition of nuisance is a step forward in clarifying what constitutes a nuisance. However, the law does not define the concept based on its nature or composition, and instead defines nuisance based on its effects. Thus, the determination of nuisance would require an inquiry into the effects of the subject matter and whether such are within what is contemplated in Article 694.

Jurisprudence has introduced two classifications of nuisance: according to the object it affects and according to its susceptibility to summary abatement. The latter classification is the one relevant to this Comment's discussion.

A nuisance may be classified as a nuisance *per se* or nuisance *per accidens*. A nuisance *per se* is subject to summary abatement because it affects the immediate safety of persons and property. On the other hand, a nuisance *per accidens* must be proven in a hearing conducted for that purpose and may not be summarily abated. This is because a nuisance *per accidens* is not inherently a nuisance as it depends upon certain conditions and circumstances.[27]

In the absence of well-defined guidelines on the determination of nuisance, litigants are challenged to present evidence that would satisfy the court in its resolution of whether the threshold between acceptable use of property and nuisance had been breached, in order to determine if there is a nuisance *per accidens*.

This challenge was demonstrated in *North Greenhills Ass'n, Inc. v. Morales*.[28] In this case, the Supreme Court reversed the Court of Appeals' ruling that the construction of a restroom was a nuisance. It noted that the Court of Appeals' use of the words "would," "should," and "could" showed that it was uncertain that the restroom had caused annoyance to the complainant. The Supreme Court emphasized that the complainant failed to introduce any evidence to prove that the restroom annoyed his senses, that foul odor emanated from it, or that it posed sanitary issues detrimental to health. It found it improper for the Court of Appeals to make assumptions on the negative effects of the emitted odors and location of the restroom. The Supreme Court held that the Court of Appeals based its findings on

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[26] *Id.* at 386.

[27] *Id.*

[28] G.R. No. 222821, 837 SCRA 28, Aug. 9, 2017.

speculation, and not on evidence.[29] This case highlights how even regulatory bodies and courts may differ as to what evidence would prove a nuisance.

The Supreme Court in *Knights of Rizal v. DMCI Homes, Inc.*[30] emphasized that trial courts are tasked with estimating the force of the factual findings and applying the law on nuisance. This task is challenging because apart from the difficulties in proving nuisance, the jurisprudential threshold of nuisance is inherently subjective – at what point can it be said that the alleged prejudice exceeds habitual or customary inconveniences that everyone is bound to bear?[31]

The challenges to objectivity brought about by the legal regime on nuisance are aggravated by the lack of statutory standards or elements of nuisance, coupled with the wide discretion given to the local government authorities and courts to determine nuisance on a case-to-case basis. It is submitted that the elastic nature of the concept of nuisance requires the law thereon to be comprehensive in scope. It is virtually impossible to statutorily define each and every nuisance because of the unique and evolving genetics, personality, and preferences of a person. Indeed, the term "nuisance" is so comprehensive that it has been applied to almost all ways which have interfered with the rights of the citizens.[32]

It has been observed that with the evolution of the concept of nuisance in law and jurisprudence, the Philippine legal system has been enriched with more standards, factors, and approaches that may be adopted to determine nuisance. Of particular interest is the treatment by the Supreme Court of noise nuisance.

III. CONCEPT OF NOISE NUISANCE

As early as 1915, the Supreme Court recognized that noise may be a nuisance susceptible of suppression, particularly in thickly populated districts.[33] In 1916, the Court promulgated its decision in *De Ayala*, where it resolved the issue of whether or not the noise from the operation of a brewery is a nuisance. The Court, after considering the semi-industrial character of the locality, the noise produced, and the testimonial evidence presented, ruled that

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[29] *Id.* at 47.

[30] G.R. No. 213948, 824 SCRA 327, Apr. 18, 2017.

[31] Velasco v. Manila Electric Co. [hereinafter "*Velasco*"], G.R. No. 18390, 40 SCRA 342, Aug. 6, 1971.

[32] *Cruz*, 778 SCRA 385, 386.

[33] *Churchill*, 32 Phil. 580, 607.

the operation of a brewery was not unreasonable as it only caused minimum offense to nearby residents.[34]

The case of *Velasco v. Manila Electric Co.* is the first to discuss noise nuisance in-depth. The Supreme Court relied on U.S. jurisprudence, from which Philippine laws on nuisance traced their origin, in its recognition that the maintenance of disturbing noise may constitute an actionable nuisance. It held:

> While no previous adjudications on the specific issue have been made in the Philippines, our law of nuisances is of American origin, and a review of authorities clearly indicates the rule to be that the causing or maintenance of disturbing noise or sound may constitute an actionable nuisance. The basic principles are laid down in *Tortorella vs. Traiser & Co., Inc.*:
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> > A noise may constitute an actionable nuisance, but it must be a noise which affects injuriously the health or comfort of ordinary people in the vicinity to an unreasonable extent. Injury to a particular person in a peculiar position or of especially sensitive characteristics will not render the noise an actionable nuisance. In the conditions of present living noise seems inseparable from the conduct of many necessary occupations. Its 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. They may be affected, but are not controlled, by zoning ordinances. The delimitation of designated areas to use for manufacturing, industry or general business is not a license to emit every noise profitably attending the conduct of any one of them. 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 reasonably bounds; or in the vicinity of property of another owner who though

[34] *Ayala,* 33 Phil. 538.

> creating a noise is acting with reasonable regard for the rights of those affected by it.[35]

After a review of foreign jurisprudence, the Supreme Court in *Velasco* found that the character and intensity of the noise are determinative of nuisance. However, such factors are based on the subjective appreciation of ordinary witnesses. Thus, the Supreme Court found the testimonies of the witnesses to be vague and imprecise. The Supreme Court instead relied on quantitative measures and evaluated the noise level as recorded by sound level meters. It compared the recorded noise level with that of other familiar sounds:

> Technical charts submitted in evidence show the following intensity levels in decibels of some familiar sounds: average residence: 40; average office: 55; average automobile, 15 feet: 70; noisiest spot at Niagara Falls: 92 (Exhibit "11-B"); average dwelling: 35; quiet office: 40; average office: 50; conversation: 60; pneumatic rock drill: 130 (Exhibit "12"); quiet home — average living room: 40; home ventilation fan, outside sound of good home airconditioner [sic] or automobile at 50 feet: 70 (Exhibit "15-A").[36]

In 2006, the Supreme Court promulgated its decision in the case of *AC Enterprises, Inc. v. Frabelle Properties Corp.*,[37] wherein it tackled the issue of noise nuisance. In resolving the issue of whether or not the complaint states a cause of action, it held that noise is not a nuisance *per se* and that there can be no fixed standard on what kind of noise constitutes a nuisance. The Supreme Court introduced a test to determine if noise constitutes a nuisance:

> 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.[38]

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[35] *Velasco*, 40 SCRA at 347–48. (Citations omitted.)
[36] *Id.* at 352.
[37] [Hereinafter "*AC Enterprises*"] G.R. No. 166744, 506 SCRA 625, Nov. 2, 2006.
[38] *Id.* at 663.

While the Supreme Court in *Velasco* considered the character and the intensity of the noise to be indicators of nuisance, it held in *AC Enterprises* that intensity or volume are not the determining factors:

> Commercial and industrial 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. The fact that the cause of the complaint must be substantial has often led to expressions in the opinions that to be a nuisance the noise must be deafening or loud or excessive and unreasonable. *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.*[39]

IV. UPDATE IN JURISPRUDENCE: FRABELLE PROPERTIES CORP. v. AC Enterprises, Inc.

In 2020, the Supreme Court promulgated its decision in *Frabelle Properties Corp. v. AC Enterprises, Inc.*[40] This case stems from the same factual antecedents of *AC Enterprises, Inc.*, and finally resolves the issue of whether the noise complained of is an actionable nuisance.

A. Factual Background and Supreme Court Ruling

1. Facts

Frabelle Properties Corporation ("Frabelle") is the developer and manager of Frabella I Condominium ("Frabella"), a building composed of residential and commercial units, located at Rada Street, Makati City. AC Enterprises, Inc. (AC Enterprises) is the owner of Feliza Building ("Feliza"), a building composed of commercial and office units, located along V.A. Rufino Street, Makati City. Frabella and Feliza are located across each other, with Rodriguez Street separating the buildings.

Frabelle sought judicial recourse to abate the noise emanating from the operation of Feliza's blowers. Both Frabelle and AC Enterprises

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[39] *Id.* at 664. (Emphasis in the original.)

[40] [Hereinafter "*Frabelle Properties*"], G.R. No. 245438, Nov. 3, 2020.

submitted testimonial evidence, as well as the results of the noise pollution tests they had respectively conducted on separate occasions.[41]

2. Ruling

The Supreme Court resolved the issue on whether or not there is an actionable nuisance in favor of AC Enterprises, finding that the noise from the blowers of Feliza does not constitute a nuisance.[42]

The *Frabelle Properties* case consolidated and introduced guidelines on how to appreciate the factual circumstances of the case to determine if noise amounts to an actionable nuisance. These guidelines add rigidity to the inherently elastic concept of nuisance.

B. Factors Considered by the Supreme Court

1. Noise Pollution Tests

The Supreme Court in *Velasco* gave premium to the noise pollution tests. It found the tests to be more reliable than the testimonies of the witnesses, and described the same to be "impartial and objective evidence." It ruled that, "[t]he noise emitted continuously day and night from the electric transformers was a nuisance because the recorded noise level was higher compared to the ambient sound of the residential locality."[43]

In *Frabelle Properties*, the Supreme Court similarly considered the results of noise pollution tests, but held that such are not controlling in the determination of nuisance. It recognized that, "there is no law that states that violation of the noise level limits would result in the automatic finding of nuisance."[44] Thus, even if the results of the noise pollution tests were compliant with the noise level limits under the applicable local laws, the Supreme Court did not dismiss the possibility that the noise could still amount to be a nuisance. Moreover, the Supreme Court recognized that noise pollution tests might also measure noise from externalities, such as in the facts of the case, hence, the results may not conclusively characterize a noise to be a nuisance.[45]

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[41] *Id.* at 14. This pinpoint citation refers to the copy of the decision uploaded on the Supreme Court website.

[42] *Id.* at 15.

[43] *Velasco,* 40 SCRA 342, 353.

[44] *Frabelle Properties*, at 16.

[45] *Id.* at 17.

Nevertheless, noise pollution tests continue to be reliable and carry weight in the court's determination of nuisance. The Supreme Court had to decide which among the various and separate noise pollution tests was the most reliable. It identified several factors that the bench and bar should consider when they present similar evidence:

> 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. 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.[46]

2. Approval of the Local Government

In the case, the respondent presented the permits and licenses issued by the Makati City government in its favor, allowing it to conduct business in Feliza and operate its blowers. The Supreme Court clarified that while the grant of permits and licenses to the respondent raises the presumption that its activities in Feliza are lawful, what might be lawful for the local government may still be considered a nuisance subject to abatement. Thus, the Supreme Court characterized this type of evidence to be merely corroborative and of little weight in the determination of nuisance.[47] It adopted the discussion of the U.K. Supreme Court in *Coventry v. Lawrence*:

> 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 that that activity causes a nuisance than

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[46] *Id.*

[47] *Id.*, *citing AC Enterprises*, 506 SCRA 625, 665.

> 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.
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> 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.[48]

3. Locality and Character of Surroundings

The Supreme Court, drawing from foreign jurisprudence, emphasized that the locality and character of surroundings is a circumstance of great importance in determining nuisance. It described the location of Feliza and Frabella to be at the heart of the Makati Central Business District, a very busy area where commercial activities are prevalent.

The Supreme Court held that "[w]hile noise is expected given the locality and character of surroundings, it must not be more than those ordinarily expected. Otherwise, it shall be considered a nuisance."[49] It described the locality and character of Feliza in the following manner:

> 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.[50]

The Supreme Court found that the noise level of the Makati Central Business District is expected to be higher than other areas because of the magnitude of activity therein, and that respondent did not cause any more

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[48] *Id.* at 18–19, *quoting* Coventry v. Lawrence, 2014 UKSC 13, Feb. 26, 2014.
[49] *Id.* at 19–20.
[50] *Id.* at 20.

noise than that which was reasonably necessary to operate its air-conditioning units.

4. Injury to Health or Comfort

The Supreme Court held that "[t]he determining factor is that the noise is of such character as to produce *actual physical discomfort and annoyance to a person of ordinary sensibilities*."[51] There was an issue raised on the number of witnesses that should be presented to prove injury to health or comfort of ordinary persons. The Supreme Court ruled that the number of witnesses is not controlling. What must be proven is that the witness being presented possesses the normal and ordinary level of sensitivity and habits of living of the other persons similarly situated. Nevertheless, while the number of witnesses is not controlling, it is of great importance in establishing the standard acceptable to ordinary people.[52]

In giving minimal consideration to the testimony of petitioner's lone tenant-witness, the Supreme Court held:

> 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.[53]

5. Other Harms

Finally, the Supreme Court considered the harms raised by petitioner—lost income opportunity and health injury.

On the issue of lost income opportunity, the Court held that the petitioner failed to prove that there had been a decrease in rental income or increase in vacancies. The Court added further that, "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."[54] It quoted *Tortorella*, stating that "[a] failure to secure or to retain a single tenant

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[51] *Id.* at 21. (Emphasis in the original.)
[52] *Id.* at 22.
[53] *Id.* at 23.
[54] *Id.* at 25.

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."[55]

As to the health injuries allegedly sustained by the petitioner's tenants, the Supreme Court emphasized that there should be proof of material suffering in comfort or health before it can order the abatement of nuisance. It found that the petitioner failed to present any medical evidence or expert testimony to support its claims that the noise from Feliza's blowers caused injuries to the comfort or health of its tenants. The Court compared the case to *Velasco* wherein it ruled there was nuisance upon finding that the noise caused actual physical discomfort and annoyance, as "proven through a host of expert witnesses and voluminous medical literature, laboratory findings and statistics of income."[56]

V. CONCLUSION

To conclude, this Comment seeks to fill a gap in the determination of nuisance by providing a measuring stick based on the *Frabelle* Guidelines. These guidelines are presented to aid the bench and the bar in navigating the broad and elastic law on nuisance.

1. Whether an act or omission exceeds or is within allowable limits as evidenced by scientific tests, while persuasive, is not controlling in the determination of nuisance. Consideration must still be given to when the test was made, who conducted the test, the technology that was used, and the test methodology used to determine the results.

2. Having legal authorization to perform the act or omission, while corroborative, has little weight in classifying an act or omission as a nuisance.

3. The locality and character of surroundings are circumstances that are of great importance in determining nuisance.

4. To determine if an act or omission can cause discomfort and annoyance to a "person of reasonable sensibilities" or the "average reasonable man," the witnesses presented must

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[55] *Id.*, *quoting* Tortorella v. H. Traiser & Co., 284 Mass. 497 (1933).
[56] *Id.* at 21, *citing Velasco,* 40 SCRA 342, 355.

adequately show that they are representative of the affected community.

5. Finally, other harms alleged must be substantiated by evidence to be persuasive to the courts.

These guidelines will aid in ascertaining whether the act or omission within Schrodinger's box is definitively a nuisance or not.

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