

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

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

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

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

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

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

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

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

On June 29, 1995, respondent requested that the 36 blowers of Feliza Building be tested by the NCR Environmental Management Bureau (EMB) of the Department of Environment and Natural Resources (DENR). On August 11, 1995, it received a report from the EMB that the noise generated by the blowers of Feliza Building is beyond the legal allowable level under Section 78(b) of Presidential Decree (P.D.) No. 984, as amended. FPC had the blowers tested anew by the EMB on December 8, 1995 and July 1, 1996 with the same results. Despite repeated demands, petitioner refused to act on the matter.

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

report dated August 29, 2000 and November 4, 2000.

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

- Feliza Building's airconditioning system is served by some 36 blowers, installed 4 blowers to each floor, all located on the same side directly facing Frabella I.
- Everytime the Feliza Building's airconditioning system is turned on, all or a good number of the 36 blowers operate at the same time. As a direct result of the operation of the blowers, unbearable hot air is generated and blown towards Frabella I.
- Apart from the hot air, the blowers also generate a continuous, deafening, intolerable and irritating, vibrating noise which makes normal conversation across the street and at the Frabella I difficult if not impossible.
- As a consequence of such hot air, vibrating and intolerable noise, the occupants of Frabella I have been, and still are, prevented from enjoying peaceful and comfortable use of their property thereby forcing them to vacate and/or transfer elsewhere.
- Such intolerable noise, hot air, and vibration constitute noise and/or air pollution violative of P.D. 984, the Clean Air Act and other related environmental laws.
- In all good faith without any desire to cause any unnecessary inconvenience or trouble, the complainant, for the last several years, has written and made numerous contacts with the respondent complaining about this pollution, even soliciting the help and intercession of the Makati Commercial Estate Association, Inc. (MACEA) and the Metro Manila Development Authority (MMDA) to try to settle the matter amicably.
- On the other hand, the DENR, over a span of several years, has conducted several tests. As shown by the results, the noise and vibration generated by the Feliza Building blowers exceeds the DENR and Local Government ambient noise standards hence, it undoubtedly constitutes pollution.[5]

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

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

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

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

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

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

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

Regional Director Sixto E. Tolentino, Jr. of the EMB forwarded the report to Engr. Morales on July 2, 2002.[10] In a letter dated July 19, 2002, Engr. Morales informed respondent that based on the result of investigation conducted by the DENR Management Bureau on Sound Pressure Levels (SPL) measured on the different sampling stations, the excess in the noise quality standard within the vicinity does not come from the airconditioning system with 36 blowers of Feliza Building alone; there were other prevailing factors to consider," which is beyond the control of said building and since the final result has been rendered and resolved by the concerned government agency, it is properly advised that further inquiry or anything involving a sound environment process which is not sanctioned by this office, be addressed directly to the said agency. "[11]

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

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

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

- The Feliza Building's airconditioning units are served by some 36 blowers, 4 blowers to each floor located outside the windows of the building facing directly towards the Frabella I Condominium. The 36 blowers were installed from the 2nd floor to the 10th floor of the building and these blowers are aesthetically covered by a vertical concrete sun baffles.
- [Every time] the Feliza Building's airconditioning system is turned on, all or a good number of the 36 blowers

are made to operate simultaneously. The operation of the Feliza's blowers generates a continuous deafening unbearable vibrating and stressful noise affecting the tenants of the Frabella I Condominium. Hot air is also blasted from the [Feliza] Building's blowers to the direction of the Frabella I Condominium.

- The tenants occupying the 5th to the 16th floors of the Frabella I Condominium facing Feliza Building are directly subjected to a daily continuous intense noise and hot air blast coming from the blowers of the [10-storey] Feliza Building. Some are tenants of plaintiff, who have complained to plaintiff about the matter. Tenants who could not bear the nuisance any longer have vacated their units, and as a result, many units of plaintiff have remained vacant, and unoccupied or uninhabitable, thereby depriving plaintiff with rental income that it should have otherwise be receiving.

- In all good faith, without any desire to cause any unnecessary inconvenience or trouble, plaintiff has written and made numerous contacts with defendant to complain about this nuisance, even soliciting the help and intercession of the Barangay San Lorenzo, Makati Commercial Estate Association, Inc. (MACEA), Metro Manila Development Authority (MMDA), Makati City Government, Makati Pollution Office and Department of Environment and Natural Resources (DENR), to try to settle the matter amicably. Several meetings have taken place, as well as many correspondences made by plaintiff to defendant. But reasonable and lawful demands by plaintiff to abate the nuisance have been repeatedly ignored/refused by defendant. The demand letters, and the response of defendant to these letters, are herein attached and made integral part of this Complaint as follows:

Date

Annex

Remarks

11 April 1995

"A" Demand letter to abate nuisance

15 May 1995

"B" Response to demand letter

06 June 1995

"C" Follow-up demand letter

14 August 2000

"D" Follow-up demand letter

- There [are] more letters that were exchanged between plaintiff and defendant and/or their lawyers, but they will not be attached to this Complaint at this time to simplify the facts.

- Even the Metro Manila Development Authority (MMDA) and Makati Commercial Estate Association, Inc. (MACEA) wrote defendant letters urging it to rectify and abate the nuisance. Copies of the letters of the MMDA dated 29 April 1996 and the MACEA dated 10 October 1996 are herein attached and marked as Annexes - "E" and "F"[.] respectively.

- On the other hand, the DENR, over a span of 7 years, has conducted several noise sampling tests. As shown by the results, the unbearable noise generated by the Feliza's blowers is beyond the legally allowable level under Sec. 78(b) of P.D. 984, as indicated in their reports, hence[,] it undoubtedly constitutes nuisance. Copies of the test results are herein attached and made an integral part of this Complaint as follows:

Date

Annex

29 June 1995

"G"

11 August 1995

"H"

08 December 1995

"I"

01 July 1996

"J"

04 November 1996

"K"

29 August 2000

"L"

- Please note that the testing done on 08 December 1995 (Annex - "I") was even requested by defendant.

- On 04 February 2003, another test by the DENR was conducted, and a copy of the results are herein attached and marked as Annex - "M." Although the latest test would seem to indicate that there was a reduction in the decibel readings as compared with the previous tests, this is actually misleading. For one, 28 blowers were operational at the time of the testing, as opposed to the previous testing done when all 36 blowers were functioning. This is rather exceptional because ordinarily, all 36 blowers of the Feliza Building are in operation. The fact that only 28 blowers were operational at the time of the testing resulted in the lower decibel reading.

- Plaintiff will also demonstrate by expert testimony during the course of the trial that there were lapses committed during the latest testing that materially influenced the results. But be that as it may, defendant did not perform any remedial or rectification works to lower the noise being generated by the blowers, hence[,] it was not responsible for any imagined or actual reduction in the decibel readings.

- As a consequence of such unbearable, hot air and stressful noise, the occupants of the Frabella I, including the tenants of plaintiff, have been and still are, prevented from enjoying peaceful and comfortable use of their property thereby forcing them to vacate and or to transfer elsewhere.

- Notwithstanding the foregoing results, repeated requests/demands from the plaintiff and recommendations of the DENR, MACEA and MMDA to abate the pollution and nuisance, the defendant has ignored and still continues to ignore such requests/demands/ recommendation.[13]

Respondent prayed for injunction and the following other reliefs, thus:

WHEREFORE, premises considered, it is respectfully prayed that upon the filing of this Complaint, after notice and hearing, and after the payment of a bond in an amount to be fixed by the Honorable Court, a Writ of Preliminary Injunction be issued enjoining defendant from operating the airconditioning system of the Feliza Building and/or turning on the blowers subject matter of this suit while the instant case remains pending.

After trial and hearing, judgment be rendered against the defendant and for the plaintiff, ordering the former:

- To abate the noise and air pollution being generated by all the blowers of the airconditioning system of Feliza Building, and/or to make the Writ of Preliminary Injunction permanent;

- To pay plaintiff the amount of P1,000,000.00 in temperate or moderate damages[;]
- To pay the plaintiff the amount of P1,000,000.00 as and by way of exemplary damages;
- To pay the plaintiff the amount of P500,000.00 as and by way of attorney's fees; and
- [To pay] the cost of the suit.[14]

Petitioner moved for the dismissal of the complaint on the following grounds: (1) lack of jurisdiction of the court over the subject matter of the complaint; (2) the complaint does not state a cause of action; and (3) the action is barred by res judicata, litis pendencia, and forum shopping.[15]

Petitioner averred that it was the Makati City Government that had jurisdiction over the complaint pursuant to Republic Act (R.A.) No. 7160. It also pointed out that DENR Administrative Order (A.O.) No. 30 issued on June 30, 1992 devolved to the local government units the power to determine matters pertaining to environmental management such as: (a) enforcement of pollution control and environmental protection laws, rules and regulations; (b) abatement of noise and other forms of nuisance; and (c) implementation of cease and desist orders issued by the PAB. It maintained that respondent had filed a similar action before the Makati City Government concerning the same issues presented in the complaint and that the City Building Official, Engr. Morales, had ruled in his letter dated July 19, 2002 that the excess in the noise quality standard within the vicinity was caused not only by the air-conditioning system of Feliza Building but also by other prevailing factors which were beyond its control. Respondent had failed to appeal the resolution; hence, the resolution of the City Building Official barred the complaint.

Petitioner further averred that, aside from the action brought before the City Government, the Frabella Condominium Corporation (FCC) filed a case for Abatement of Noise and/or Air Pollution and Damages with Prayer for Interim Cease and Desist Order, docketed as PAB Case No. 01-0009-NCR. As gleaned from the material averments of the two complaints, both involved the same set of facts and issues. Consequently, the petition is barred by litis pendencia, and respondent was guilty of violating Section 5, Rule 7 of the Rules of Court for failure to include in its certification against forum-shopping of the pendency of the PAB case or the prior resolution by the City Government of the complaint before the City Building Official/City Engineer.

Petitioner further claimed that the complaint stated no cause of action because it failed to allege any right of respondent which it was obliged to respect, and any act or omission of defendant in violation of such right. As gleaned from the EMB's report to the City Engineer on May 24, 2002, the passing of vehicles along the street and blowers in the nearby building contributed to the ambient noise quality in the area.[16]

In compliance with the order of the court, the parties submitted their respective Position Papers. Respondent averred that the provisions of R.A. No. 7160 cited by petitioner apply not to abatements of nuisance but to pollution control cases.[17] The local government units (LGUs) are only granted administrative and executive powers, not judicial or quasi-judicial functions to abate a nuisance. While admitting that DENR A.O. No. 30 devolved to the LGUs the function of abating noise and other forms of nuisance as defined by law, plaintiff posited that said A.O. is not a law and the DENR cannot deprive the court of its jurisdiction over the abatement of nuisance.

Respondent alleged that in filing a motion to dismiss, petitioner hypothetically admitted the factual allegations in the complaint and, thus, only questions of law remained; hence, the doctrine of primary jurisdiction and the need for exhaustion of administrative remedies do not apply. Moreover, petitioner itself had even admitted that respondent had tried to seek administrative relief before the Makati City Government, but the City Building Official denied the same. It insisted that to require the further exhaust of administrative remedies beyond what it

had tried in the past years would be an injustice. It claimed that the proper application of P.D. No. 984 was in issue, specifically Section 78(b) of the Rules and Regulations of the National Pollution Control Commission (NPCC) which were adopted and promulgated pursuant to Section 6 of P.D. No. 984 and Title VIII of the Civil Code. Respondent maintained that Engr. Morales' letter to it could not be considered as final as to constitute res judicata between the parties. It was only a reply-letter. Besides, the City Engineer/Building Official could not exercise quasi-judicial functions. Due process was not also observed because no proceedings were conducted. It insisted that it wrote follow-up letters to know the basis of his findings and to confirm the fact that the Makati City Government did not issue a permit to operate its airconditioning unit. However, Engr. Morales refused to acknowledge the same and did not reply thereto.

Respondent asserted that it did not engage in forum shopping as the complainant in the PAB case was FCC, a corporation of unit owners of Frabella I. It is a totally different corporate entity, the stockholders and officers of which are not similar to FPC. On petitioner's claim that there was no cause of action for the abatement of nuisance, it declared that the material allegations of its complaint and the answer thereto show otherwise. Petitioner had the obligation to abate the nuisance caused by the blowers of Feliza Building. Although under the DENR Report on May 24, 2002, the DENR conducted noise sampling, and noted that the passing vehicles along the street and blowers of nearby building contributed to the noise, the basis of its complaint was the noise generated by the blowers of Feliza Building.

Before the RTC court could resolve the motion to dismiss of petitioner, the PAB resolved, on July 29, 2003[18] to dismiss the complaint filed by Frabelle. The matter was then endorsed to the LGU concerned in accordance with Section IV, Rule III of PAB Resolution 1-C, Series of 1997, as amended. It noted that based on the pleadings of the parties, and the testimonial evidence, the case is more of a nuisance, and "[e]xcept where such would constitute a pollution case, local government units shall have the power to abate nuisance within their respective areas pursuant to the Republic Act No. 386 (Civil Code of the Philippines), Republic Act 7160 (the Local Government Code), Presidential Decree 856 (the Code of Sanitation of the Philippines), DENR Department Administrative Order No. 30, Series of 1992 and other pertinent laws, rules and regulations" without prejudice to the institution of a pollution case, upon proof that respondent had failed to comply with DENR standards and the presentation of other evidence that would warrant the PAB to take cognizance of and assert jurisdiction over the case.[19]

Thereafter, the RTC denied petitioner's motion to dismiss in an Order[20] dated September 15, 2003. It ruled that the doctrine of primary jurisdiction simply calls for the determination of administrative questions, which are ordinarily questions of facts and not of law. Likewise, the trial court is not divested of its jurisdiction simply because of plaintiff's failure to observe the doctrine of exhaustion of administrative remedies. Moreover, as gleaned from the averments of the complaint, there was an urgency of abating the noise and air pollution generated by the blowers of petitioner's airconditioning system such that respondent prayed for injunctive relief. The RTC took note of the allegations of respondent that it would suffer great and irreparable injury; hence, to require it to exhaust further administrative remedies would be, in effect, a nullification of its claim.

According to the RTC, the doctrine of res judicata applies only to judicial and quasi-judicial proceedings and not to the exercise of administrative powers. Thus, no forum shopping was also committed. Since the findings of the City Building Official appear to be a complete disavowal of the previous results gathered from the numerous tests conducted by the EMB, the court could not be deprived of its inherent power to review the factual findings of the administrative official in order to determine the regularity of the procedure used.

On the merits of the complaint, the RTC declared that the factual allegations were sufficient in themselves to constitute a cause of action against respondent and, if admitting the facts, the court can render valid judgment on

the basis thereof in accordance with the relief prayed for:

Undeniably, the instant complaint is one for abatement of nuisance. Plaintiff alleges that the operation of defendant's blowers generates a continuous, deafening, unbearable, vibrating and stressful noise affecting its tenants. Some have already vacated their units while others refused to pay rents and threaten plaintiff to be sued because of the unabated nuisance. Plaintiff has been deprived of rental income. It had written and made numerous contacts with the defendant to complain about the nuisance and further solicited intervention from government agencies including the Government of Makati City. Defendant allegedly failed or refused to abate the nuisance which is in total disregard of the right of the plaintiff over its property. Contested findings of the EMB and City Building Official of Makati City are, likewise, put in issue. These are sufficient to constitute a cause of action against the defendant and, if admitting the facts, this Court can render valid judgment upon the same in accordance with the relief prayed for.[21]

The court denied the motion for reconsideration filed by petitioner[22] and the latter sought: relief from the CA via a petition for certiorari. Petitioner averred that:

THE PUBLIC RESPONDENT ACTED WITHOUT JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION SO GRAVE AS TO LOSE JURISDICTION IN ASSUMING AND EXERCISING ITS JURISDICTION IN CIVIL CASE NO. 03-3745-MN, CONSIDERING THAT:

- THE HONORABLE COURT HAS NO JURISDICTION OVER THE SUBJECT MATTER OF THE COMPLAINT. JURISDICTION IS VESTED WITH THE MAKATI CITY GOVERNMENT, THE LOCAL GOVERNMENT UNIT CONCERNED.

- THE COMPLAINT IS BARRED BY RES JUDICATA. THE MAKATI CITY GOVERNMENT HAS ALREADY DECIDED A COMPLAINT FILED BY FRABELLE. FRABELLE DID NOT ELEVATE THE SAME ON APPEAL, OR, IN ANY WAY, QUESTION SUCH DECISION. THUS, THE DECISION BY THE MAKATI CITY GOVERNMENT IS NOW FINAL AND EXECUTORY.

- AT THE TIME THE COMPLAINT WAS FILED, IT WAS BARRED BY LITIS PENDENTIA. A SIMILAR ACTION WAS PENDING WITH THE POLLUTION ADJUDICATION BOARD (PAB) WHICH, SUBSEQUENTLY, FOUND NO LIABILITY ON THE PART OF AC. FRABELLE IS CLEARLY AND UNDENIABLY GUILTY OF FORUM-SHOPPING.

- PLAINTIFF FRABELLE HAS NO CAUSE OF ACTION AND THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION AGAINST AC ENTERPRISES.[23]

Petitioner asserted that, by express provision of law, the City of Makati has primary jurisdiction over the complaint and is the competent authority to determine the existence of any incidence of pollution, the special standards and regulations controlling the same and the resolution whether a party has complied with the regulations. The complaint does not fall under any of the exceptions to the rule on exhaustion of administrative remedies. Respondent is guilty of short-circuiting the whole process without requisite justification. Contrary to the contention of respondent, the proceedings before the City Government are quasi-judicial in nature. It pointed out that the City Government had already made its findings, which respondent did not contest in the proper tribunal within the reglementary period. It did not appeal the decision of the City Building Official conformably with DENR Administrative Order No. 37-45 (General Manual of Operations for Devolved Functions from the Department of Environment and Natural Resources to the Local Government Units); hence, the resolution became final and executory. It insisted that the complaint is but a desperate attempt to revive what is otherwise a dead issue.

On September 21, 2004, the CA rendered judgment denying the petition.[24] The fallo of the decision reads:

WHEREFORE, premises considered, the petition is DISMISSED for lack of merit. Accordingly, the dismissal of the petition rendered the application for a temporary restraining order or writ of preliminary injunction moot and academic.

SO ORDERED.[25]

The CA ruled that the action of respondent was one for the abatement of a nuisance within the exclusive jurisdiction of the RTC. It agreed with respondents' contention that, under R.A. No. 7160, the LGUs are not divested of its jurisdiction over an action for the abatement of a nuisance. Section 17, sub-paragraphs (b)(3)(iii) in relation to (b)(4) of the law pertain to the enforcement of pollution control law and not to the abatement of nuisance. While DENR A.O. No. 30 devolved to the LGUs the abatement of noise and other forms of nuisance as defined by law, this does not necessarily deprive the courts to hear and decide actions pertaining thereon. It was thus proper for respondent to bring the case before the court since it had already sought the intercession of Barangay San Lorenzo, Makati Commercial Estate Corporation (MACEA), DENR, and the Makati City Government to no avail.

Further, the doctrine of primary jurisdiction and the principle of exhaustion of administrative remedies need not be adhered to when the question between the parties is purely legal. In this case, petitioner, in filing a motion to dismiss, is deemed to have hypothetically admitted all the factual averments of respondent. Hence, what is left for the court to adjudicate is only the application of laws dealing with nuisance. The CA also declared that the filing of the case below was not barred by res judicata for the reason that the decision adverted to by petitioner was only a letter of the City Building Official to respondent; no adversarial proceedings or submission of evidence and position papers took place before said office. At best, the letter is only an exercise of the City Government's administrative powers, not judicial or quasi-judicial functions which the City Building Official does not possess. Respondent's filing of the complaint before the Malabon RTC is also not barred by litis pendentia. FCC, as complainant, initiated the action before the PAB, while the respondent filed the pending case before the court; there is no identity of parties since FCC has a personality separate and distinct from that of respondent.

Finally, the CA held that all the requisites for the existence of a cause of action were present in the case at bar. Due to the unbearable noise and hot air allegedly produced by the blowers installed at petitioner's building, tenants of respondent have been complaining, forcing them to vacate their units while others refused to pay their rent and threatened to take legal action. Respondent had the right to abate such nuisance in order to avert future business losses. Since petitioner refused to heed its demands, respondent was well within its right to file a case protecting its property and proprietary rights.

On January 18, 2005, the appellate court resolved to deny petitioner's motion for reconsideration[26] for lack of merit.[27]

Petitioner forthwith filed the instant petition for review on certiorari, praying for the reversal of the CA decision and resolution on the following grounds:

I.

THE COURT OF APPEALS ERRONEOUSLY RULED THAT THE LOWER COURT HAS JURISDICTION OVER THE INSTANT CASE, CONSIDERING THAT THE EXCLUSIVE AUTHORITY TO DETERMINE THE ISSUES INVOLVED IN THE CASE A QUO LIES WITH THE CITY OF MAKATI.

A.

THE COURT OF APPEALS ERRED IN NOT RULING THAT THE POWER TO ABATE NUISANCES AND CONTROL NOISE POLLUTION HAS BEEN DEVOLVED TO THE LOCAL GOVERNMENT UNIT

CONCERNED IN ACCORDANCE WITH REPUBLIC ACT 7160 OTHERWISE KNOWN AS THE LOCAL GOVERNMENT CODE.

II.

THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE ISSUES INVOLVED IN THE INSTANT CASE NECESSARILY INVOLVE A QUESTION OF FACT, AND, THEREFORE, THE DOCTRINE OF PRIMARY JURISDICTION AND THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES ARE BOTH APPLICABLE.

III.

THE COURT OF APPEALS ERRONEOUSLY RULED THAT THE COMPLAINT IS NOT BARRED BY (1) LITIS PENDENTIA; (2) RES JUDICATA; AND (3) FORUM-SHOPPING.

IV.

THE COURT OF APPEALS ERRED IN RULING THAT RESPONDENT'S COMPLAINT STATES A CAUSE OF ACTION.[28]

Petitioner insists that, under Section 17(b)(4) in relation to Section 17(b)(3)(III) of R.A. No. 7160, the City of Makati is obliged to enforce the Pollution Control Law, and under Section 458(4)(I) of the said law, the Sangguniang Panghmgasod is empowered to declare, prevent or abate any nuisance. Thus, the City of Makati has exclusive jurisdiction over respondent's complaint for the abatement of the noise from the blowers of the airconditioning unit of the Feliza Building and of the hot air generated by the said blowers. Petitioner avers that the issues before the trial court were factual in nature. By its motion to dismiss the complaint, it did not hypothetically admit the allegations of respondent in its complaint that the noise and hot air emitted by the blowers of the Feliza Building constitute a nuisance or air pollution because the allegations are mere conclusions of law and not mere statements of facts. Respondent's complaint before the trial court and its several complaints against petitioner before quasi-judicial bodies is an implied admission of the availability of administrative remedies under the law. Since respondent failed to pursue and exhaust all administrative remedies before filing its complaint below, its action was premature. While there were exceptions to the requirement of exhaustion of administrative remedies, nevertheless, respondent failed to establish any of them. Moreover, respondent's action before the RTC was barred by the letter of the City Engineer's Office of Makati City on July 19, 2002 which ruled that there was no factual basis for respondent's complaint; hence, respondent's complaint was barred by res judicata. The complainant in PAB Case No. 01-0009-NCR involved the same set of issues and circumstances, and the complainant therein and respondent represented the same interests, alleged the same rights and prayed for the same reliefs. Consequently, the RTC erred in denying its motion to dismiss the complaint on the ground of res judicata, litis pendencia and forum shopping.

Finally, respondent had no cause of action against petitioner because, as shown by the tests conducted by the EMB on May 24, 2002, based on noise sampling tests, the noise and air pollution did not emanate from Feliza Building but from passing cars.

In its comment on the petition, respondent maintained that the assailed orders of the RTC and decision of the CA are in accord with law and the rulings of this Court. Respondent maintains that the only issue before the trial court was how to apply P.D. No. 984 and Section 78(b) and the Rules and Regulations of the NPCC and the provisions of the New Civil Code governing the abatement of nuisance. By filing a motion to dismiss the complaint on the ground that it stated no cause of action, the petitioner thereby hypothetically admitted the factual allegations

therein. The court must hear the case to be able to finally resolve the factual issues that may be raised in the Answer of the petitioner after the denial of its motion to dismiss.

Respondent avers that it was not obliged to first exhaust all administrative remedies. It pointed out that the Building Official of Makati City ignored its right to due process when he dismissed its complaint without conducting an investigation based solely on the July 2, 2002 Report of the EMB Panel. The issues between the parties are legal, that is, whether there is irreparable injury. It likewise points out that to require exhaustion of administrative remedies would be unreasonable as the rule does not provide a plain, speedy and adequate remedy. It insists that it could not have appealed the letters of the City Mayor and the Building Official of Makati because there are no rules promulgated by the City governing appeals from said letters. It points out that the City Engineer and City Mayor did not grant its letter requesting for a clarification of petitioner's letters denying its letter-complaint.

The petition is denied for lack of merit.

The Order of the RTC dated September 15, 2003 denying the motion to dismiss of petitioner (as defendant below) is interlocutory in nature. The general rule is that an order denying a motion to dismiss a complaint cannot be questioned via a special civil action for certiorari until a final judgment on the merits of the case is rendered. A party must exhaust all remedies available before resorting to certiorari. A writ for certiorari is not intended to correct every controversial interlocutory ruling. It is resorted only to correct a grave abuse of discretion or a whimsical exercise of judgment equivalent to lack of jurisdiction. It is a remedy narrow in scope, limited only to keeping an inferior court within its jurisdiction and to relieve persons from arbitrary acts which courts have no power or authority to perform.[29] The remedy of petitioner was to go to trial and appeal from an adverse decision.

Moreover, the CA correctly ruled that the RTC did not commit grave abuse of its discretion in denying the motion to dismiss filed by respondent. Indeed, the assailed orders of the RTC are in accord with the law and rulings of this Court, taking into account the averments of the complaint and the answer appended thereto and the other pleadings of the parties.

The RTC Has Jurisdiction Over the Action of the Respondent for Abatement Of Nuisance

It is axiomatic that the nature of an action and whether the tribunal has exclusive jurisdiction over such action are to be determined from the material allegations of the complaint, the law in force at the time the complaint is filed, and the character of the relief sought irrespective of whether plaintiff is entitled to all or some of the claims averred. Jurisdiction is not affected by the pleas or the theories set up by defendant in an answer to the complaint or a motion to dismiss the same. Otherwise, jurisdiction would be dependent almost entirely upon the whims of defendants.[30]

We agree with the ruling of the RTC, as affirmed by the CA, that as gleaned from the material averments of the complaint as well as the character of the relief prayed for by respondent in its complaint before the RTC, the petition is one for the judicial abatement of a private nuisance, more specifically the noise generated by the blowers of the airconditioning system of the Feliza Building owned by petitioner, with a plea for a writ of preliminary and permanent injunction, plus damages. Such action of respondent is incapable of pecuniary estimation because the basic issue is something other than the right to recover a sum of money. Although respondent prayed for judgment for temperate or moderate damages and exemplary damages, such claims are

merely incidental to or as a consequence of, the principal relief sought by respondent. An action incapable of pecuniary estimation is within the exclusive jurisdiction of the RTC as provided in Batas Pambansa Bilang (B.P. Blg.) 129, as amended by R.A. No. 7691.[31] In *Tatel v. Municipality of Virac*,[32] the Court ruled that a simple suit for abatement of a nuisance is within the exclusive jurisdiction of the Court of First Instance, now the RTC.

Article 694 of the New Civil Code defines a nuisance as follows:

Art. 694. 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.

The term "nuisance" is so comprehensive that it has been applied to almost all ways which have interfered with the rights of the citizens, either in person, property, the enjoyment of his property, or his comfort.[33] According to Article 695 of the Civil Code, a nuisance may be either public or private:

Art. 695. Nuisance is either public or private. A public nuisance affects a community or neighborhood or any considerable number of persons, although the extent of the annoyance, danger or damage upon individuals may be unequal. A private nuisance is one that is not included in the foregoing definition.

A private nuisance has been defined as one which violates only private rights and produces damages to but one or a few persons.[34] 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.[35] It is an unreasonable interference with the right common to the general public.[36]

Under Article 705 of the New Civil Code, a party aggrieved by a private nuisance has two alternative remedies: (1) a civil action; or (2) abatement, without judicial proceedings. A person injured by a private nuisance may abate it as provided in Article 706:

Art. 706. Any person injured by a private nuisance may abate it by removing, or if necessary by destroying the thing which constitutes the nuisance, without committing a breach of the peace or doing unnecessary injury.

However, it is indispensable that the procedure for extrajudicial abatement of a public nuisance by a private person be followed.

A private nuisance action is the remedy for an invasion of a property right. On the other hand, the action for the abatement of a public nuisance should be commenced by the city or municipality.[37] A private person may institute an action for the abatement of a public nuisance in cases wherein he suffered a special injury of a direct and substantial character other than that which the general public shares.[38] The district health officer shall determine whether or not abatement, without judicial proceedings, is the best remedy against a public nuisance.[39]

In the present case, respondent opted to file an action in the RTC for abatement of the private nuisance complained of and damages under Article 697 of the New Civil Code for its past existence.

One has an action to recover personal damages arising from a private nuisance. The gist of the action is the unreasonable interference by the defendant with the use and enjoyment of properties. Indeed, petitioner may be compelled to adopt the necessary measures to reduce or deaden the nuisance emanating from the blowers of the

airconditioning system at the Feliza Building.

The PAB has no primary jurisdiction over the noise complained of by the respondent. The resolution of the issue before the RTC, which is whether the noise complained of is actionable nuisance, does not require any special technical knowledge, expertise and experience of the PAB or even of Makati City requiring the determination of technical and intricate matters of fact. Indeed, the PAB dismissed the complaint of the Frabelle I Condominium Corporation declaring that, based on the pleadings before it and the evidence of the parties, the case is more of an abatement of a nuisance under the New Civil Code and DENR Order No. 30, Series of 1992. It declared that it was not a pollution case. The Resolution reads:

After considering the evidence adduced and the arguments of both parties in their pleadings, the Board, likewise giving due importance to the technical findings giving rise to the conclusion that the nature of the case is more of a nuisance, hereby resolves to DISMISS the pending complaint of pollution in accordance with Rule III, Section IV of PAB Resolution 1-C, Series of 1997 as amended, which categorically states that "Except where such would constitute a pollution case, local government units shall have the power to abate a nuisance within their respective areas pursuant to the Republic Act No. 386 (Civil Code of the Philippines), Republic Act 7160 (the Local Government Code), Presidential Decree 856 (the Code on Sanitation of the Philippines), DENR Department Administrative Order No. 30, Series of 1992 and other pertinent laws, rules and regulations. " (underscoring supplied)

Accordingly, the issues raised by the complainant are hereby endorsed to the Local Government Unit concerned for appropriate action consistent with above cited laws, and without prejudice to the institution of a pollution case upon definite findings that herein respondent had failed to comply with the DENR Standards, and presentation of other evidence that would warrant the Board to take cognizance of the matter as a pollution case.[40]

The power of the NPCC to resolve pollution cases under Section 6, paragraphs (e), (f), (g), (j), (k) and (p) of P.D. No. 984 is vested in the Pollution Adjudication Board (PAB) under Title XIV, Chapter 2, Section 13 of the 1987 Administrative Code, which reads:

SEC. 13. Pollution Adjudication Board. - The Pollution Adjudication Board, under the Office of the Secretary, shall be composed of the Secretary as Chairman, two Undersecretaries as may be designated by the Secretary, the Director of Environmental Management, and three others to be designated by the Secretary as members. The Board shall assume the powers and functions of the Commission Commissioners of the National Pollution Control Commission with respect to the adjudication of pollution cases under Republic Act 3931 and Presidential Decree 984, particularly with respect to Section 6 letters (e), (f), (g), (j), (k) and (p) of P.D. 984. The Environment Management Bureau shall serve as the Secretariat of the Board. These powers and functions may be delegated to the regional officers of the Department in accordance with the rules and regulations to be promulgated by the Board.

The cases referred to in Section 6 of P.D. No. 984 are as follows:

(e) Issue orders or decisions to compel compliance with the provisions of this Decree and its implementing rules and regulations only after proper notice and hearing.

(f) Make, alter or modify orders requiring the discontinuance of pollution specifying the conditions and the time within such discontinuance must be accomplished.

(g) Issue, renew or deny permits, under such conditions as it may determine to be reasonable, for the prevention and abatement of pollution, for the discharge of sewage, industrial waste, or for the installation or operation of sewage works and industrial disposal system or parts thereof: Provided, however, That the Commission, by rules and regulations, may require subdivisions, condominium, hospitals, public buildings and

other similar human settlements to put up appropriate central sewerage system and sewage treatment works, except that no permits shall be required of any new sewage works or changes to or extensions of existing works that discharge only domestic or sanitary wastes from a single residential building provided with septic tanks or their equivalent. The Commission may impose reasonable fees and charges for the issuance or renewal of all permits herein required.

xxx

(j) Serve as arbitrator for the determination of reparations, or restitution of the damages and losses resulting from pollution.

(k) Deputize in writing or request assistance of appropriate government agencies or instrumentalities for the purpose of enforcing this Decree and its implementing rules and regulations and the orders and decision of the Commission.

xxx

(p) Exercise such powers and perform such other functions as may be necessary to carry out its duties and responsibilities under this Decree.

Section 2(a) of P.D. No. 984 defines pollution as:

(a) "Pollution" means any alteration of the physical, chemical and biological properties of any water, air and/or land resources of the Philippines, or any discharge thereto of any liquid, gaseous or solid wastes as will or is likely to create or to render such water, air and land resources harmful, detrimental or injuries to public health, safety or welfare or which will adversely affect their utilization for domestic, commercial, industrial, agricultural, recreational or other legitimate purposes.

We agree with petitioner's contention that, under Section 447(a)(3)(i) of R.A. No. 7160, otherwise known as the Local Government Code, the Sangguniang Panglungsod is empowered to enact ordinances declaring, preventing or abating noise and other forms of nuisance. It bears stressing, however, that the Sangguniang Bayan cannot declare a particular thing as a nuisance per se and order its condemnation. It does not have the power to find, as a fact, that a particular thing is a nuisance when such thing is not a nuisance per se; nor can it authorize the extrajudicial condemnation and destruction of that as a nuisance which in its nature, situation or use is not such. Those things must be determined and resolved in the ordinary courts of law. If a thing be in fact, a nuisance due to the manner of its operation, that question cannot be determined by a mere resolution of the Sangguniang Bayan.[41]

Section 17 of R.A. No. 7160 provides that local government units shall discharge the functions and responsibilities of national agencies and offices devolved to them pursuant to the law; and such other powers, functions and responsibilities as are necessary, appropriate or incidental to efficient and effective provisions of the basic services and facilities in the Code. Devolution refers to the act by which the national government confers powers and authority upon the various local government units to perform specific functions and responsibilities.

What were devolved by the DENR to the LGUs under DENR Administrative Order No. 30 dated June 30, 1992, in relation to R.A. No. 7160, were the regulatory functions/duties of the National Pollution Control Commission (NPCC) which were absorbed and integrated by the EMB, as provided in Title No. XIV, Chapter 2, Section 17 of the 1987 Administrative Code. However, the DENR exercises administrative supervision and control over the LGUs. Enumerated in Chapter IV, Article 1, Sections 74 to 79 of the Rules and Regulations promulgated by the NPCC implementing P.D. 984 are the regulations relative to noise control, specifically, the noise quality standards.

Under Section 78 of said Rules, as amended by NPCC Memorandum Circular No. 002, dated May 12, 1980, the Environmental Quality Standards for Noise in General Areas are:

Category

Of Area

Daytime Morning &

Evening Nighttime

AA

50 dB 45 dB 40 dB

A

55 " 50 " 45 "

B

65 " 60 " 55 "

C

70 " 65 " 60 "

D

75 " 70 " 65 "

Class "A" area refers to that section or contiguous area which is primarily used for residential purposes, while Class "B" refers to that section or contiguous area which is primarily a commercial area. Frabelle I and Feliza Buildings are located in Makati City, an area which is classified as a commercial district.

The division of the 24-hour period shall be as follows:

Morning.....5:00 A.M. to 9:00 A.M.

Daytime..... 8:00 A.M. to 10:00 P.M.

Evening..... 6:00 P.M. to 10:00 P.M.

Nighttime..... 10:00 P.M. to 5:00 P.M.

The LGUs may conduct inspections, at all reasonable times, without doing damage, after due notice to the owners of buildings to ascertain compliance with the noise standards under the law; and to order them to comply therewith if they fail to do so; or suspend or cancel any building permits or clearance certificates issued by it for said units/buildings after due hearing as required by P.D. No. 984.

However, the LGUs have no power to declare a particular thing as a nuisance unless such as thing is a nuisance per se; nor can they effect the extrajudicial abatement of that as a nuisance which in its nature or use is not such. Those things must be resolved by the courts in the ordinary course of law.

Whether or not noise emanating from a blower of the airconditioning units of the Feliza Building is nuisance is to be resolved only by the court in due course of proceedings. The plaintiff must prove that the noise is a nuisance and the consequences thereof. Noise is not a nuisance per se. It may be of such a character as to constitute a nuisance, even though it arises from the operation of a lawful business, only if it 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 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.[42]

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.[43]

The courts have made it clear that 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's 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 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.[44]

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.[45]

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.[46]

We reject petitioner's contention that respondent's complaint does not state a cause of action for abatement of a private nuisance and for damages. Under Section 1(g), Rule 16 of the Rules of Court, a complaint may be

dismissed upon motion if the complaint states no cause of action, or that a condition precedent for filing the claim has not been complied with.[47]

A cause of action is the act or omission by which a party violates a right of another.[48] A cause of action exists if the following elements are present: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of plaintiff or constituting a breach of the obligation of defendant to plaintiff for which the latter may maintain an action for recovery of damages.[49]

The fundamental test for failure to state a cause of action is whether, admitting the veracity of what appears on the face and within the four corners of the complaint, plaintiff is entitled to the relief prayed for. Stated otherwise, may the court render a valid judgment upon the facts alleged therein?[50] Indeed, the inquiry is into the sufficiency, not the veracity of the material allegations.[51] If the allegations in the complaint furnish sufficient basis on which it can be maintained, it should not be dismissed regardless of the defenses that may be presented by defendants.[52] As the Court emphasized:

In determining whether allegations of a complaint are sufficient to support a cause of action, it must be borne in mind that the complaint does not have to establish or allege facts proving the existence of a cause of action at the outset; this will have to be done at the trial on the merits of the case. To sustain a motion to dismiss for lack of cause of action, the complaint must show that the claim for relief does not exist, rather than that a claim has been defectively stated, or is ambiguous, indefinite or uncertain.

Equally important, a defendant moving to dismiss a complaint on the ground of lack of cause of action is regarded as having hypothetically admitted all the averments thereof.[53]

The general rule is that the facts asserted in the complaint must be taken into account without modification although with reasonable inferences therefrom.[54] However, all the pleadings filed may be considered, including annexes, motions and the other evidence on record, to wit:

However, in so doing, the trial court does not rule on the truth or falsity of such documents. It merely includes such documents in the hypothetical admission. Any review of a finding of lack of cause of action based on these documents would not involve a calibration of the probative value of such pieces of evidence but would only limit itself to the inquiry of whether the law was properly applied given the facts and these supporting documents. Therefore, what would inevitably arise from such a review are pure questions of law, and not questions of fact.[55]

Section 2, Rule 3, of the Revised Rules of Civil Procedure provides that every action must be prosecuted or defended in the name of the real party-in-interest.

SEC. 2. Parties in interest. - A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest. (2a)

"Interest" within the meaning of the rule means material interest, an interest in essence to be affected by the judgment as distinguished from mere interest in the question involved, or a mere incidental interest. By real interest is meant a present substantial interest, as distinguished from a mere expectancy or a future, contingent, subordinate or consequential interest.[56] A real party in interest-plaintiff is one who has a legal right while a real party defendant is one who has a correlative legal obligation whose act or omission violate the legal right of the former.[57]

A person injured by a nuisance may bring an action in his own name and in behalf of others similarly affected to abate the same.[58] One who has an interest in the property affected such as the owner thereof or fix interest

therein are proper parties as plaintiffs.[59] Possession alone of real estate is sufficient to sustain an action to recover damages from the maintenance of a nuisance by the adjoining property in such manner as to injure the enjoyment of the former.

In the present case, respondent made the following allegations in its complaint below:

[Every time] the Feliza Building's airconditioning system is turned on, all or a good number of the 36 blowers are made to operate simultaneously. The operation of the Feliza's blowers generates a continuous deafening unbearable vibrating and stressful noise affecting the tenants of Frabella I Condominium. Hot air is also blasted from the [Feliza Building's blowers to the direction of the Frabella 1 Condominium.

x x x x

The tenants occupying the 5th to the 16th floors of the Frabella 1 Condominium facing Feliza Building are directly subjected to a daily continuous intense noise and hot air blast coming from the blowers of the [10-storey] Feliza Building. Some are tenants of plaintiff, who have complained to plaintiff about the matter. Tenants who could not bear the nuisance any longer have vacated their units, and as a result, many units of plaintiff have remained vacant, and unoccupied or uninhabitable thereby depriving plaintiff with rental income that it should have otherwise be receiving.

x x x x

Defendant did not perform any remedial or rectification works to lower the noise being generated by the blowers;

As a consequence of such unbearable, hot air and stressful noise, the occupants of the Frabella I, including the tenants of plaintiff, have been and still are, prevented from enjoying peaceful and comfortable use of their property thereby forcing them to vacate and or to transfer elsewhere.

Notwithstanding the foregoing results, repeated requests/demands from the plaintiff and recommendation of the DENR, MACEA and MMDA to abate nuisance, the defendant has ignored and still continues to ignore such requests/demands/recommendation.

Appended to respondent's complaint are its letters of demand to the petitioner for the latter to abate the nuisance complained of, as well as the results of the tests conducted by the DENR showing that the noise generated by the blowers of the Feliza Building is beyond the legally allowable level standards under Section 78 of P.D. No. 984.

By filing a motion to dismiss the complaint on the ground that the complaint does not state a sufficient cause of action for abatement of nuisance and damages, petitioner hypothetically admitted the material allegations of the complaint. A plain reading of the material averments therein and its appendages will readily show that respondent had a cause of action for abatement of a private nuisance and for damages.

Respondent is the real party-in-interest as party plaintiff in the complaint below because it owned several units in Frabelle I and, as a result of the deafening and unbearable noise from the blowers of the airconditioning units of the Feliza Building owned by petitioner, many tenants of the respondent vacated their units. The units remained unoccupied, thereby depriving respondent of income. Some of the tenants even threatened to sue respondent on account of the noise from the Feliza Building. In fine, respondent is obliged to maintain its tenants in the peaceful and adequate enjoyment of the units.[60]

Under Article 697 of the New Civil Code, the aggrieved party is entitled to damages for the present and past existence of a nuisance.[61] He is entitled to actual or compensatory damages[62] or indemnification for damages inclusive of the value of the loss suffered and profits which respondent failed to obtain.

Liability for nuisance may be imposed upon one who sets in motion the force which entirely caused the tortuous act; upon one who sets in motion a force or a chain of events resulting in the nuisance. In an action for damages resulting from a nuisance, responsibility arises not only from the creator of the nuisance but from its continued maintenance as well.[63]. One is entitled to damages on account of the conduct by another of his business which unreasonably and substantially interferes with the quiet enjoyment of his premises by himself or of his tenants.[64] It is sufficient to maintain an action for abatement of a nuisance if his buildings is rendered valueless for the purpose it was devoted.

A negligent act may constitute a nuisance. An intentional act may also constitute a nuisance. A nuisance may be formed from a continuous, known invasion, where, after complaint, and notice of damage, the defendant continues to offend and refuses to correct or discontinue the nuisance. In such a case, the nuisance is deemed intentional.[65] An unreasonable use, perpetrated and uncorrected even after complaint and notice of damage is deemed intentional.[66]

In this case, as alleged in the complaint, the subject nuisance had been existing continuously since 1995 and, despite repeated demands by respondent, petitioner intransigently refused to abate the same.

We reject petitioner's contention that considering the Report of the EMB Team dated July 2, 2002 that the noise complained of by the respondent did not necessarily come from the blowers but also from passing cars, it follows that respondent has no cause of action against it for abatement of nuisance. As gleaned from the Report, the panel of investigators found that the passing of vehicles along the street and blowers of nearby buildings were merely contributory to the ambient noise quality in the area. To what extent the passing of vehicles contributed to the noise is not indicated in the Report, nor is it stated that the noise coming from the blowers of the airconditioning unit of the Feliza Building were at par with or lower than the Level Standards under the property Rules and regulations of P.D. No. 984.

The July 2, 2002 Report of the EMB Panel should not be considered in isolation of other Reports of the EMB since 1995 up to 2000, showing that the noise level from the blowers of the Feliza Building exceeded the allowable level under P.D. No. 984. The July 2, 2002 Report is not decisive on the issue of whether petitioner had abated the nuisance complained of by respondent or that the nuisance does not exist at all. Indeed, in *Velasco v. Manila Electric Company*,^[67] this Court cited the ruling in *Kentucky & West Virginia Power Co. v. Anderson*,^[68] thus:

xxx 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. 20 R.C.L. 445, 453; *Wheat Culvert Company v. Jenkins*, *supra*. There can be no fixed standard as to what kind of noise constitutes a nuisance. xxx

Besides, even if it is assumed for the nonce that petitioner had abated the nuisance in 2002, still the complaint of the respondent states a cause of action for damages based upon the past existence of the nuisance, from 1995. Where the injury from the alleged nuisance is temporary in its nature; or is of a continuing or recurring character, the damages are ordinarily regarded as continuing and one recovery against the wrongdoer is not a bar to sanction an action for damages thereafter accruing from the same wrong.^[69]

The Complaint of the
Respondent Not Premature

Admittedly, respondent did not appeal the July 19, 2002 letter of Engr. Morales. However, the letter was not

appealable. It bears stressing that the letter-complaint of the respondent to Mayor Jejomar Binay against petitioner was referred to Engr. Morales for investigation of the complaint; the latter was required to submit his Report thereon to the City Mayor for final disposition. Engr. Morales did secure the July 2, 2002 Report of the EMB but failed to make a Report on his findings. Until after the City Mayor shall have acted on the findings and recommendation of Engr. Morales an appeal therefrom would be premature.

Obviously, Engr. Morales gave respondent another chance to have the EMB reverse or revise its July 2, 2002 Report. However, when the officials of respondent sought a clarification of his Order, Engr. Morales was piqued and even dared them to go to court if they were not satisfied with the EMB Report. Respondent then sought another test by the EMB. In its November 24, 2003, Report, the EMB confirmed that the SPL was higher when the doors were open; as it was, the SPL readings were taken from inside the Frabelle I. The EMB added that the noise quality standards in Section 78 of the Implementing Rules and Regulations of P.D. No. 984 could not be applied since it is for ambient noise. It even emphasized that the SPL are not the actual factors in the resolution of the issues. Conformably with case law, the EMB opined, noise need not be high or low to annoy or cause nuisance to the receptor; as long as the complainant is disturbed with the level of sound coming from the firm, the same is a nuisance. Clearly, the EMB was of the view that the EMB Reports are not decisive on the issue between petitioner and respondent, and that said issue is one beyond the competence of the LGUs, by implying that the issue is a matter to be presented to and resolved by the ordinary courts. By returning the records to Makati City, the EMB expected the City to dismiss the complaint and just allow respondent, as complainant, to seek relief from the courts. Respondent then took its cue from the EMB Report and filed its complaint in the RTC. There is, thus, no basis for the contention of petitioner that respondent failed to exhaust all administrative remedies before filing its complaint with the RTC.

Also barren of merit are the petitioner's contention that the action of respondent was barred by the decision of the PAB AM No. 01-0009-FLC. While it is true that the Frabella 1 Condominium Corporation filed its complaint against petitioner before the PAB for and in behalf of the tenants/owners of units of Frabella I, including those owned by respondent, however, the PAB dismissed the complaint on the ground of lack of jurisdiction and without prejudice. The PAB ruled that respondent's action was for abatement of a nuisance which was already devolved to the local government.

As gleaned from the Resolution, the dismissal was without prejudice. Since the PAB had no jurisdiction over the complaint and the dismissal was without prejudice, respondent's action before the RTC was not barred by res judicata or litis pendentia^[70]. The decision of the PAB was not a decision on the merits of the case.^[71] Consequently, the contention of petitioner that respondent is guilty of forum shopping has no factual basis.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. Costs against the petitioner.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Eugenio S. Labitoria (retired), with Associate Justices Rebecca De Guia-Salvador and Rosalinda Asuncion Vicente, concurring; CA rollo, pp. 189-202.

[2] Penned by Judge Benjamin T. Antonio.

[3] CA rollo, p. 242.

[4] Id. at 65.

- [5] CA rollo, pp. 48-49.
- [6] Id. at 57-58.
- [7] Id. at 45-46.
- [8] Rollo, p. 389.
- [9] Id. at 392.
- [10] Id. at 389.
- [11] Id. at 388.
- [12] Records, pp. 46-47.
- [13] Records, pp. 2-5.
- [14] Id. At 9-10.
- [15] Id. at 80-89.
- [16] CA rollo, pp. 55-63.
- [17] Id. at 86-99.
- [18] Id. at 175.
- [19] Id. at 93.
- [20] Rollo, pp. 119-123.
- [21] Id. at 123.
- [22] Id. at 124-132.
- [23] CA rollo, pp. 11-12.
- [24] Rollo, pp. 189-202.
- [25] Id. at 201.
- [26] Id. at 205-221.
- [27] Id. at 256-257.
- [28] Id. at 21.
- [29] *Indiana Aerospace University v. Commission on Higher Education*, G.R. No. 139371, April 4, 2001, 356 SCRA 367, 384.
- [30] *Arzaga v. Copias*, 448 Phil. 171, 180 (2003); *Del Mar v. PAGCOR*, 400 Phil. 307, 326 (2000).
- [31] *Radio Communication of the Philippines v. Court of Appeals*, 435 Phil. 62, 66 (2002); *Raymundo v. Court of Appeals*, G.R. No. 97805, September 2, 1992, 213 SCRA 457, 460-461.
- [32] G.R. No. 40243, March 11, 1992, 207 SCRA 157.
- [33] Tolentino, *Civil Code of the Philippines, Property*, Vol. II, p. 372.

[34] Id. at 377.

[35] *Connerty v. Metropolitan District Commission*, 495 M.E.2d 840 (1986).

[36] *Harvey v. Mason City & Ft. Dodge R. Co.*, 105 N.W. 958 (1906).

[37] Art. 701, New Civil Code.

[38] *Connerty v. Metropolitan District Commission*, supra note 36.

[39] Art. 702, New CIVIL CODE.

[40] CA rollo, p. 93.

[41] *Estate of Francisco v. Court of Appeals*, G.R. No. 91279, July 25, 1991, 199 SCRA 597, 601.

[42] *Tortorella v. H. Traiser & Co.*, 90 ALR 1203 (1933).

[43] *Kentucky and West Virginia Power Company v. Anderson*, 156 S.W.2d 857 (1941) (emphasis ours).

[44] *Clinic and Hospital v. McConnell*, 23 ALR2d 1278 (1951).

[45] *Sullivan v. Royer*, 72 Cal. 248, 13 P 655 (1887); *Five Oaks Corp. v. Gathmann*, 190 Md 348, 58 A2d 656(1948).

[46] *Robinson v. Westman*, 29 N.W.2d 1 (1947).

[47] Section 1 (j), Rule 16, Rules of Court.

[48] Section 2, Rule 2, 1997 Rules of Civil Procedure.

[49] *Mondragon Leisure and Resorts Corporation v. United Coconut Planters Bank*, G.R. No. 154187, April 14, 2004, 427 SCRA 585, 592; *Barcelona v. Court of Appeals*, G.R. No. 130087, September 24, 2003, 412 SCRA 41, 46; *Nadela v. City of Cebu*, G.R. No. 149627, September 18, 2003, 411 SCRA 3 15, 323; *Bank of America NT & SA v. Court of Appeals*, 448 Phil. 181, 1 94 (2002); *Ceroferre Realty Corporation v. Court of Appeals*, 426 Phil. 522, 528 (2002); *Uy v. Hon. Evangelista*, 413 Phil. 403, 415 (2001); *Drilon v. Court of Appeals*, G.R. No. 106922, April 20, 2001, 357 SCRA 12, 21; and *Alberto v. Court of Appeals*, 390 Phil. 253, 263 (2000).

[50] *Regino v. Pangasinan Colleges of Science and Technology*, G.R. No. 156109, November 18, 2004, 443 SCRA 56, 59; *Hongkong and Shanghai Banking Corporation Limited v. Catalan*, G.R. No. 159590, October 18, 2004, 440 SCRA 498, 510; *Mondragon Leisure and Resorts Corporation v. United Coconut Planters Bank*, supra, at 591; *Equitable Philippine Commercial International Bank v. Court of Appeals*, G.R. No. 143556, March 16, 2004, 425 SCRA 544, 552; *Vda. De Daffon v. Court of Appeals*, 436 Phil. 233, 239 (2002); *Heirs of Kionisala v. Heirs of Dacut*, 428 Phil. 249, 259 (2002); *Alberto v. Court of Appeals*, id; *Heirs of Paez v. Hon. Torres*, 381 Phil. 393, 400 (2000); and *Dabuco v. Court of Appeals*, 379 Phil. 939, 949 (2000).

[51] *Hongkong and Shanghai Banking Corporation, Limited v. Catalan*, id.

[52] Id.; *Mondragon Leisure and Resorts Corporation v. United Coconut Planters Bank*, supra, at 591-592; and *Vda. Da Daffon v. Court of Appeals*, supra, at 239.

[53] *Paraigwaque Kings Enterprises, Inc. v. Court of Appeals*, G.R. 111538, February 26, 1997, 268 SCRA 727.

[54] *Nadela v. City of Cebu*, supra, at 323; *Heirs of Kionisala v. Heirs of Dacut*, supra, at 259.

[55] *China Road and Bridge Corporation v. Court of Appeals*, 401 Phil. 590, 602 (2000).

- [56] *Ortigas & Co., Ltd. v. Court of Appeals*, 400 Phil. 615, 625 (2000).
- [57] *Rebollido v. Court of Appeals*, G.R. No. 81123, February 28, 1989, 170 SCRA 800, 806.
- [58] *Robinson v. Westman*, *supra* note 47.
- [59] *Connerty v. Metropolitan District Commission*, *supra* note 36.
- [60] Art. 1654(3), NEW CIVIL CODE.
- [61] Art. 697, New Civil Code.
- [62] Art. 2199, New Civil Code.
- [63] *Hasapopoulos v. Murphy*, 689 S.W.2d 118 (1985).
- [64] *Pratt v. Hercules, Inc.*, 570 F. Supp. 773 (1982).
- [65] *Supra* note 51.
- [66] *Bower v. Hog Builders, Inc.*, 461 S.W.2d 784 (1970); *Vaughn v. Missouri Power and Light Co.*, 89 SW2d 699 (1935); *Hawkins v. Burlington Northern, Inc.*, 514 S.W.2d 593 (1974).
- [67] G.R. No. 18390, August 6, 1971, 40 SCRA 342, 348-349.
- [68] 156S.W.2d857.
- [69] *Harvey v. Mason City & Ft. Dodge R. Co*, *supra* note 37.
- [70] *Cayana v. Court of Appeals*, G.R. No. 125607, March 18, 2004, 426 SCRA 10, 19-21; *Delgado v. Court of Appeals*, G.R. No. 137881, December 21, 2004, 447 SCRA 402, 415.
- [71] *Custodio v. Corrado*, G.R. No. 146082, July 30, 2004, 435 SCRA 500, 508-509.

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