



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

SPOUSES PABLO CALIMLIM G.R. No. 272053

and PATNUBAY ISLA

CALIMLIM, represented by
Bienvenido I. Calimlim and
Roberto B. Cabral,

Petitioners,

Members:

LEONEN, *J. Chairperson,*

LAZARO-JAVIER,

LOPEZ, M.,

LOPEZ, J., and

KHO. JR., *JJ.*

-versus-

Promulgated:

EFREN G. GOÑO and

RAFAELITA R. GOÑO,

Respondents.

JAN 14 2025

X-----X

DECISION

LAZARO-JAVIER, J.:

The Case

This Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assails the following dispositions of the Court of Appeals in CA-G.R. CV No. 116735:

¹ Rollo, pp. 11-36.

1. Decision² dated September 13, 2023 reversing the Judgment dated November 16, 2020 of Branch 14, Regional Trial Court, Nasugbu, Batangas which dismissed spouses Efren G. Goño (Efren) and Rafaelita R. Goño's (Rafaelita; collectively referred to as spouses Goño) complaint for abatement of nuisance, easement, and injunction against spouses Pablo Calimlim and Patnubay Isla Calimlim (spouses Calimlim), substituted by Bienvenido Calimlim and Rufina Cabral; and
2. Resolution³ dated February 1, 2024, denying spouses Calimlim's motion for reconsideration.

Antecedents

On January 3, 2012, spouses Goño filed with the Regional Trial Court of Nasugbu, Batangas a complaint for abatement of nuisance, easement, and injunction against spouses Calimlim.

Spouses Goño alleged that they are the owners and operators of Villa Alexandra Beach Resort and Restaurant (Villa Alexandra) situated in Barangay Matabungkay, Lian, Batangas.⁴ On the other hand, spouses Calimlim operated informal structures and rest houses⁵ along the shore of Matabungkay Beach and provided video machines, videoke sets, and billiard tables with assortment of sari-sari stores and carinderias to tourists.⁶ By reason of the discomfort and inconvenience caused by spouses Calimlim's aforesaid activities, their resort and restaurant guests complained and swore never to return to Villa Alexandra. Some guests even left to stay in another establishment.⁷

The structures constructed by spouses Calimlim obstructed the view of Villa Alexandra on the shore of Matabungkay Beach.⁸ These structures stood on a piece of land declared as a tourist zone and maritime reserve of the sea under Proclamation No. 1801 dated November 10, 1978. Spouses Goño learned that the Department of Environment and Natural Resources (DENR) denied spouses Calimlim's application for a foreshore lease. Too, spouses Calimlim did not secure the necessary permits, e.g., building permit, business permit, sanitary permit, and mayor's permit, from the proper authorities for

² *Id.* at 146–161. The September 13, 2023 Decision was penned by Associate Justice Mary Charlene V. Hernandez-Azura and concurred in by Associate Justices Victoria Isabel A. Paredes and Florencio M. Mamauag, Jr., Twelfth Division, Court of Appeals, Manila.

³ *Id.* at 199–200. The February 1, 2024 Resolution was penned by Associate Justice Mary Charlene V. Hernandez-Azura and concurred in by Associate Justices Victoria Isabel A. Paredes and Florencio M. Mamauag, Jr., Twelfth Division, Court of Appeals, Manila.

⁴ *Id.* at 39.

⁵ Referred to as shanties or rest houses in the Judgment of the trial court and Decision of the Court of Appeals.

⁶ *Rollo*, p. 39.

⁷ *Id.* at 58.

⁸ *Id.* at 39.

their business; nor did spouses Calimlim issue the corresponding official receipts or pay taxes on their business.⁹ Spouses Calimlim's operations produced excessive noise, offensive odor, and made the water coming from their toilets seep into the ground and in the open dining area of Villa Alexandra. Spouses Calimlim also failed to dispose of human excrement in a sanitary manner but in a way that is nauseating and repulsive to the guests of Villa Alexandra.¹⁰ They maintained open-fire kitchens where their guests could cook on makeshift stoves. On June 15, 2009, spouses Goño heard an explosion which resulted in a fire in the main electrical line of Rufina Cabral (Rufina). The fire was not put out until respondent Efren brought a fire extinguisher from Villa Alexandra to quell the flames.¹¹

Spouses Goño demanded that spouses Calimlim remove the structures but the latter refused. Hence, spouses Goño were constrained to file a complaint before the barangay chairperson of Matabungkay, Lian, Batangas. The parties, however, were unable to settle.¹² As a result of spouses Calimlim's unsanctioned activities, spouses Goño's income was reduced by PHP 50,000.00, more or less.¹³

Spouses Goño prayed for the issuance of: (1) an order of demolition and removal of spouses Calimlim's shanties and rest houses; (2) a cease-and-desist order of operations of the shanties and rest houses; (3) a cease-and-desist order of operations of the cafeteria, billiard tables, video machines, videoke sets, and other activities; (4) an order granting spouses Goño the right to use the portions of land possessed by spouses Calimlim; (5) an order granting them easements of light and view to the sea; (6) an order abating the nuisance created by spouses Calimlim and granting them easement against nuisance; and (7) award of actual, moral and exemplary damages, attorney's fees, and costs of suits in their favor.¹⁴

During the hearing, Josephine Umali (Umali), Records Officer of the Community Environment and Natural Resources Office (CENRO), Calaca, Batangas, testified that based on their official records, spouses Goño sought the help of the DENR to remove the subject structures. The DENR eventually issued a Notice to Vacate dated November 15, 2015; a second Notice to Vacate dated February 12, 2017 addressed to spouses Calimlim and Eпитacio Cabral and Rufina Cabral; and a Memorandum from the Provincial Environment and Natural Resources Office (PENRO) of Batangas City dated October 16, 2006. Umali clarified though that she had no personal knowledge of the execution of the documents. She merely testified on their existence in the records of the CENRO which she has custody of.¹⁵

⁹ *Id.* at 148.

¹⁰ *Id.* at 59.

¹¹ *Id.* at 42-43.

¹² *Id.* at 43.

¹³ *Id.*

¹⁴ *Id.* at 40.

¹⁵ *Id.* at 43-44.

Spouses Goño further alleged and testified that they also reached out to the Department of Tourism, which referred their complaint to Mayor Osita Vergara (Mayor Vergara) of Lian, Batangas, and acting Vice Governor Jose Antonio S. Leviste. The Office of the President through its Presidential Action Center in Malacañang likewise followed up with the office of Mayor Vergara.¹⁶

On the other hand, spouses Calimlim countered that they had been residing and occupying the premises for more than 50 years, prior to the establishment of Villa Alexandra. Other similar structures had been erected and were operating in Matabungkay Beach. Spouses Goño failed to show that there had been an invasion or violation of some private right because not every cause of discomfort, inconvenience, and annoyance can be condemned and abated as a nuisance. There is no basis for spouses Goño's claim that spouses Calimlim had obstructed their view of Matabungkay Beach. Further, spouses Goño's alleged loss of income is a natural consequence of the competition among similar establishments operating in Matabungkay Beach. By way of counterclaim, spouses Calimlim prayed for moral damages, exemplary damages, and legal fees each in the amount of PHP 100,000.00.¹⁷

Proceedings before the Trial Court

On January 12, 2012, Branch 14, Regional Trial Court, Nasugbu, Batangas denied the prayer of spouses Goño for the issuance of a temporary restraining order and writ of preliminary injunction as there was no affidavit of merit attached to the complaint. They filed a motion for reconsideration on February 8, 2012.¹⁸

From spouses Calimlim's end, they filed an Omnibus Motion (Notice of Substitution, Motion to Admit Opposition to Motion for Reconsideration, and Motion to Admit Answer) on April 27, 2012. Meanwhile, the trial court directed the parties to appear at the Court Annexed Mediation, which was unsuccessful per Mediator's Report dated July 11, 2012.¹⁹

Meantime, by Resolution dated September 3, 2012, the trial court granted spouses Calimlim's motion for substitution of parties. As a result, deceased spouses Calimlim were substituted by Bienvenido Calimlim and Joey Calimlim. In the same resolution, the trial court denied spouses Goño's motion for reconsideration of the denial of their prayer for issuance of temporary restraining order or writ of preliminary injunction.²⁰

¹⁶ *Id.* at 43.

¹⁷ *Id.* at 41.

¹⁸ *Id.* at 40.

¹⁹ *Id.*

²⁰ *Id.*

On February 27, 2014, the trial court referred the case for Judicial Dispute Resolution to Acting Presiding Judge Vicente B. Montes. But as stated in the trial court's Order dated April 28, 2014, the parties still failed to reach an amicable settlement.²¹

The case was consequently returned to Branch 14 for hearing and resolution on the merits. On November 7, 2014, the trial court conducted a pre-trial conference during which the possibility of entering into an amicable settlement was once again attempted, but still failed.²² The parties nonetheless stipulated that: (1) spouses Calimlim do not have certificates of title over the lot where their structures were situated; (2) spouses Calimlim were engaged in the business of renting rooms to local and foreign tourists; (3) spouses Calimlim operated sari-sari stores and carinderias to serve food to the public, as well as billiard tables and videoke machines; (4) spouses Calimlim's application for a foreshore lease was denied by the Land Management Bureau of the DENR; and (5) spouses Goño served demands on spouses Calimlim to demolish their structures and to cease operations.

During the hearing proper,²³ only spouses Goño were able to present evidence. For spouses Calimlim's part, they invariably failed to present evidence on the dates indicated in the pre-trial order. Thus, the trial court considered them to have waived their right to do so. Spouses Calimlim nonetheless sought a reconsideration, albeit the trial court did not act on it. Instead, the trial court issued its Order dated July 26, 2017, considering the case submitted for decision. Again, spouses Calimlim sought a reconsideration thereof. Subsequently, however, spouses Calimlim's counsel manifested that they would be submitting their case for decision. Hence, the trial court directed the parties to file their respective memoranda within 15 days, after which, the case shall be deemed submitted for resolution.²⁴

Ruling of the Trial Court

By Judgment²⁵ dated November 16, 2020, the trial court dismissed the Complaint, viz.:

WHEREFORE, the foregoing premises considered, the instant complaint for Abatement of Nuisance, Easement and Injunction is hereby **DISMISSED**.

SO ORDERED.²⁶ (Emphasis in the original)

²¹ *Id.* at 42.

²² *Id.*

²³ *Id.* at 148.

²⁴ *Id.* at 150.

²⁵ *Id.* at 39–47. The November 16, 2020 judgement was penned by Presiding Judge Wilhelmina B. Go-Santiago.

²⁶ *Id.* at 47.

The trial court held that spouses Goño were unable to prove that the structures of spouses Calimlim caused damage to their property or that it caused either intentional and unreasonable interference or one which though unintentional, was negligent or reckless. The loss of income sustained by spouses Goño could not be directly attributed to spouses Calimlim as there were so many competing businesses along Matabungkay Beach. The structures of spouses Calimlim were intended to serve the tourists of Matabungkay Beach and were not operated to directly interfere with spouses Goño's business or to merely inconvenience or annoy them. As shown by the photos submitted by spouses Goño, there was likewise no obstruction of light and view to Villa Alexandra. Regarding the alleged water that seeped into Villa Alexandra and the incident involving the explosion which resulted in a fire, it held that these did not pose substantial harm to spouses Goño. The trial court likewise dismissed spouses Calimlim's counterclaim, there being allegedly no sufficient proof of bad faith on the part of spouses Goño.²⁷

Ruling of the Court of Appeals

On appeal, spouses Goño emphasized that spouses Calimlim illegally constructed their structures on portions of land they do not own or have title to, and that the length of time of their occupation is immaterial since they have built and operated their business in bad faith. More, their open-fire kitchen with makeshift stoves exposed the entire area to a possible conflagration. Spouses Calimlim allegedly set up their illegal business in direct competition with spouses Goño's legitimate business and covered the area fronting Matabungkay Beach. As riparian owners, spouses Goño are entitled to use the bank of rivers, shores, lakes, and other similar bodies of water. Spouses Goño faulted the trial court as well for rendering a decision that permits the illegal construction of structures on shorelines upon the pretext that these serve the tourists of Matabungkay Beach. Further, they had allegedly shown by concrete evidence how the structures of spouses Calimlim were a nuisance prohibited by law. Having suffered long enough due to the illegal, unsightly, and unsanitary operations of spouses Calimlim, spouses Goño claimed anew their entitlement to damages and attorney's fees.²⁸

In response, spouses Calimlim contended that spouses Goño violated the provisions of Administrative Matter No. 12-8-8-SC or the Judicial Affidavit Rule for failing to authenticate the documentary exhibits attached to the judicial affidavits. Hence, these should not have been admitted into evidence. Spouses Calimlim likewise defended the judgment of the trial court and maintained that spouses Goño were not entitled to an abatement of nuisance, declaration of easement, and injunction.²⁹

²⁷ *Id.* at 45-47.

²⁸ *Id.* at 151-153.

²⁹ *Id.* at 153.

In their Reply, spouses Goño riposted that they did not violate the provisions of the Judicial Affidavit Rule as the evidence identified and authenticated are almost the same as the annexes to the Complaint which were not specifically denied under oath by spouses Calimlim. Additionally, these were compared with the original and certified by spouses Calimlim's counsel to be true and faithful reproductions of the originals. Their witnesses had also identified these documents which were formally offered as part of their testimonies. In any case, the Order dated September 11, 2015 which admitted their documentary exhibits had already become final.³⁰

In its Decision³¹ dated September 13, 2023, the Court of Appeals granted the appeal, as follows:

WHEREFORE, premises considered, the appeal is **GRANTED**. The *Judgment dated November 16, 2020* rendered by the Regional Trial Court Branch 14 of Nasugbu, Batangas, is **REVERSED and SET ASIDE**.

Defendants-appellees are **ORDERED** to **DEMOLISH** the illegal structures upon, and **VACATE**, the premises around the Matabungkay beach in front of Villa Alexandra Beach Hotel and Restaurant of plaintiffs-appellants. Defendants-appellees are **JOINTLY AND SEVERALLY** liable to **PAY** plaintiffs-appellants the amounts of P10,000.00 as temperate damages, P10,000.00 as moral damages, P10,000.00 as exemplary damages, and P10,000.00 as attorney's fees, which shall all earn legal interest at the legal rate of six per cent (sic) (6%) per annum from the finality of this Decision until its full satisfaction.

SO ORDERED.³² (Emphasis in the original)

The Court of Appeals found that the trial court committed no error in its admission of spouses Goño's documentary exhibits into evidence. The exhibits were already marked during the preliminary conference and Rafaelita identified these in her judicial affidavit during the trial. Based on the minutes of the preliminary conference, spouses Calimlim's counsel was able to compare the originals with the photocopies and certified that they were faithful reproductions of the original. Thus, these exhibits were duly identified and authenticated.³³

It disagreed with the trial court in the latter's ruling that the nuisance subject of the complaint was a private nuisance. Rather, it is a public nuisance premised on the admission of spouses Calimlim that they were occupying public property. Spouses Goño exhausted their remedies before going to court: they sent demands to spouses Calimlim for the removal of the nuisance, lodged a formal complaint with the local government, and sought the

³⁰ *Id.*

³¹ *Id.* at 146–161. The September 13, 2023 Decision was penned by Associate Justice Mary Charlene V. Hernandez-Azura and concurred in by Associate Justices Victoria Isabel A. Paredes and Florencio M. Mamauag, Jr., Twelfth Division, Court of Appeals, Manila.

³² *Id.* at 160.

³³ *Id.* at 154–155.

assistance of the CENRO and PENRO after they learned of the denial of spouses Calimlim's application for a foreshore lease. Spouses Goño then opted to pursue a civil action for the abatement of a public nuisance based on disturbance to the operations of their legitimate business resulting in loss of income, which can be considered as a special injury that is substantial in character. Further, the structures of spouses Calimlim impaired spouses Goño's use of their property and the inconveniences suffered by their guests were too substantial to ignore.³⁴ Spouses Calimlim, on the other hand, waived their right to present their evidence which was supposed to consist of their business permits. The existence of these permits, however, did not negate the existence of a nuisance.³⁵

The Court of Appeals awarded temperate damages to spouses Goño in the amount of PHP 10,000.00; and moral damages in the same amount for their wounded feelings and the sleepless nights caused by the nuisance. Exemplary damages were similarly awarded by way of correction for the public good. As spouses Goño were compelled to file an action for abatement of nuisance to protect their rights, the Court of Appeals additionally awarded them attorney's fees of PHP 10,000.00.³⁶

By Resolution³⁷ dated February 1, 2024, the Court of Appeals denied spouses Calimlim's motion for reconsideration.

The Present Petition

Spouses Calimlim now seek affirmative relief and pray that the assailed dispositions of the Court of Appeals be reversed, and the judgment of the trial court, reinstated. They reiterate that spouses Goño violated the Judicial Affidavit Rule, for which reason the exhibits orally offered through the testimony of Rafaelita should not have been admitted in evidence. Thus, the September 11, 2015 Order of the trial court admitting such exhibits is allegedly void.³⁸ In challenging the decision of the Court of Appeals, spouses Calimlim have adopted the judgment of the trial court as its arguments. They assert that spouses Goño did not file the complaint in representation of a community, neighborhood, or a considerable number of persons. The fact that spouses Calimlim are occupying public property does not make the subject of the complaint a public nuisance. Hence, the Court of Appeals is further faulted for its supposed erroneous classification of the subject matter as a public nuisance.³⁹

³⁴ *Id.* at 156–158.

³⁵ *Id.* at 158–159.

³⁶ *Id.* at 159–160.

³⁷ *Id.* at 199–200. The February 1, 2024 Resolution was penned by Associate Justice Mary Charlene V. Hernandez-Azura and concurred in by Associate Justices Victoria Isabel A. Paredes and Florencio M. Mamauag, Jr., Twelfth Division, Court of Appeals, Manila.

³⁸ *Id.* at 25–27.

³⁹ *Id.* at 27–32.

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In their Comment, spouses Goño defend the dispositions of the Court of Appeals. They assert that there was no violation of the Judicial Affidavit Rule as Rafaelita in fact identified the documentary exhibits and authenticated them in her judicial affidavit. At any rate, spouses Calimlim's counsel had the opportunity to examine the same documentary evidence and even certified that they were true and faithful reproductions of the original.⁴⁰ They also submit that the Court of Appeals correctly found that spouses Calimlim's structures were illegally built on foreshore land and that they conducted their business sans the necessary government permits. Spouses Calimlim likewise do not issue official receipts or invoices duly registered with the Bureau of Internal Revenue.⁴¹ As well, spouses Calimlim's illegal operations have proven to be injurious and continue to pose a threat to the safety of others.⁴²

Our Ruling

Foremost, a Petition for Review on *Certiorari* under Rule 45 generally requires that only questions of law be raised in the petition, since factual questions are not the proper subject of an appeal by *certiorari*.⁴³ This rule, however, is subject to exceptions, which include cases where the findings of the lower courts are conflicting.⁴⁴ Such is the case here.

Anent the alleged violation of the Judicial Affidavit Rule, We find no error in the trial court's admission of exhibits identified by Rafaelita. As held by the Court of Appeals, Rafaelita took pains in her judicial affidavit to identify each of the exhibits attached to the same.⁴⁵ As quoted by spouses Calimlim themselves in their Petition,⁴⁶ during the hearing of the case, she took the stand and confirmed that she did, in fact, execute a judicial affidavit dated November 6, 2014. She also affirmed the contents and facts stated therein, including her identification of the exhibits admitted by the trial court. Considering that the very purpose of the judicial affidavit is for such affidavit to take the place of the direct testimony of the witness,⁴⁷ and that Rafaelita herself affirmed the contents of her judicial affidavit in open court, there was no violation of the Judicial Affidavit Rule as to otherwise warrant the exclusion of the evidence already admitted by the trial court. Additionally, the Court notes that spouses Calimlim only raised this supposed error before the Court of Appeals. The records and even spouses Calimlim's account do not show that they objected to the admission of exhibits identified by Rafaelita. Basic is the rule that grounds for objections not raised at the proper time shall be considered waived.⁴⁸ Consequently, the Court of Appeals may not consider any other ground of objection apart from those that were raised at the proper

⁴⁰ *Temporary Rollo*, pp. 8–13.

⁴¹ *Id.* at 17–23.

⁴² *Id.* at 45–48.

⁴³ *Miano v. MERALCO*, 800 Phil. 118 (2016) [Per J. Leonen, Second Division].

⁴⁴ *Id.* citing *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225 (1990) [Per J. Bidin, Third Division].

⁴⁵ *Rollo*, p. 154.

⁴⁶ *Id.* at 21–23.

⁴⁷ A.M. No. 12-8-8-SC. January 1, 2013, Sec. 2(a)(1).

⁴⁸ *Lorenzana v. Lelina*, 793 Phil. 271, 282 (2016) [Per J. Jardeleza, Third Division].

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time.⁴⁹ Assuming, therefore, that these exhibits were not duly authenticated, this objection is deemed waived due to spouses Calimlim's failure to timely object to their admission.

Even then, the admissibility of evidence does not automatically mean that such evidence is given evidentiary weight. While a piece of evidence may be admissible, its evidentiary value depends on the trial court's evaluation of the evidence within the guidelines provided by the Rules of Evidence.⁵⁰

Going now to the main subject of nuisance, Article 694 of the Civil Code provides a general definition of nuisance, *viz.*:

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.

Too, the term "nuisance" has been considered to be "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."⁵¹ A nuisance may either be 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."⁵² A nuisance has also been considered public "when it interferes with the exercise of public right by directly encroaching on public property or by causing a common injury. It is an unreasonable interference with the right common to the general public."⁵³ Outside such definition, the nuisance is considered a private nuisance which "violates only private rights and produces damages to but one or a few persons."⁵⁴

In relation to remedies available against a nuisance, it may be further classified, as follows:

- (a) a nuisance *per se*, when it affects the immediate safety of persons and property, which may be summarily abated under the undefined law of necessity; or, (b) a nuisance *per accidens*, which 'depends upon certain conditions and circumstances, and its existence being a question of fact, it cannot be abated without due hearing thereon in a tribunal authorized to

⁴⁹ *Id.*

⁵⁰ *Magsino v. Magsino*, 847 Phil. 209, 218 (2019) [Per J. Reyes, Jr., Second Division].

⁵¹ *Rana v. Wong*, 737 Phil. 364 (2014) [Per J. Perlas-Bernabe, Second Division].

⁵² CIVIL CODE, art. 695.

⁵³ *AC Enterprises, Inc. v. Frabelle Properties Corp.*, 537 Phil. 114 (2006) [Per J. Callejo, Sr., First Division] citing *Connerty v. Metropolitan District Commission*, 495 N.E.2d 840 (1986) and *Harvey v. Mason City & Ft. Dodge R. Co.*, 105 N.W. 958 (1906).

⁵⁴ *AC Enterprises, Inc. v. Frabelle Properties Corp.*, 537 Phil. 114 (2006) [Per J. Callejo, Sr., First Division].

decide whether such a thing does in law constitute a nuisance;’ it may only be so proven in a hearing conducted for that purpose and may not be summarily abated without judicial intervention.⁵⁵ (citations omitted)

Early on in *Sitchon v. Aquino*,⁵⁶ the Court categorically ruled that “houses constructed, without governmental authority, on public streets and waterways, obstruct *at all times* the free use by the public of said streets and waterways, and, accordingly, constitute nuisances per se, aside from public nuisances.”⁵⁷

Recently, in *Municipality of Biñan, Laguna v. Holiday Hills Stock & Breeding Farm Corp.*,⁵⁸ the Court agreed that the large hog farm located near residential subdivisions was a public nuisance and nuisance *per se* that may be abated by the local government. The Court held:

What sets a nuisance *per se* apart from one *per accidens* is its characteristic of being a direct menace to public health or safety. Moreover, it is the law of necessity that justifies the summary abatement of a nuisance *per se*. Borrowing from American jurisprudence, *The Iloilo Ice and Cold Storage Company* cited a few examples: slaughterhouses; carcasses of dead animals lying within the city; goods, boxes, and the like piled up or remaining for a certain length of time on the sidewalks; or other things injurious to health, or causing obstruction or danger to the public in the use of the streets and sidewalks. *Our own jurisprudence, on the other hand, guides us with examples of nuisances per se: houses constructed on public streets without governmental authority, waterways or esteros that obstruct the free use by the public of the said streets, or a barbershop occupying a portion of the sidewalk of the poblacion's main thoroughfare.*

*Therefore, to constitute a nuisance per se, the obstruction must hinder the public use of streets, highways, or sidewalks, or the interference with the safety or property of a person must be immediate. In other words, the perceived danger that the act, omission, establishment, business, or condition of property poses must be of the type that presents an emergency. To the mind of the Court, no less than these types of situations call for the law of necessity. No other standard can be countenanced, for the measure that a nuisance per se calls for is summary abatement — an extreme, if not desperate, measure that calls for exacting circumstances, lest the constitutional guarantee of due process be robbed of its power.*⁵⁹ (Emphasis supplied, citations omitted)

Here, the Court of Appeals found that the nuisance alleged in spouses Goño’s Complaint was properly characterized as a public nuisance. While the rest house and the facilities such as video machines, videoke sets, billiard tables, open-fire kitchen, carinderia, and sari-sari stores provided by spouses

⁵⁵ *Cruz v. Pandacan Hiker's Club, Inc.*, 776 Phil. 336 (2016) [Per J. Peralta, Third Division].

⁵⁶ *Sitchon v. Aquino*, 98 Phil. 458 (1956) [Per J. Bautista, First Division].

⁵⁷ *Id.*

⁵⁸ *Municipality of Biñan, Laguna v. Holiday Hills Stock & Breeding Farm Corp.*, G.R. No. 200403, October 10, 2022 [Per J. Lopez, J., Second Division].

⁵⁹ *Id.*

Calimlim are not, by themselves, a nuisance. We nevertheless agree that under the circumstances, spouses Calimlim's structures are a public nuisance.

It is undisputed that the land on which spouses Calimlim's structures were erected is public land. Specifically, it is considered foreshore land defined as "the part of the shore which is alternately covered and uncovered by the ebb and flow of the tide."⁶⁰ While foreshore land is disposable land unlike streets, sidewalks, or public plazas that are considered beyond the commerce of man,⁶¹ the law sets particular conditions for its authorized use.

Section 61 of Commonwealth Act No. 141, as amended, provides that foreshore lands may not be disposed of through any means other than by lease.⁶² To utilize foreshore land, therefore, a qualified applicant⁶³ will first need to apply for and then enter into a foreshore lease agreement⁶⁴ with the DENR. As admitted by spouses Calimlim, their application for a foreshore lease agreement was denied by the DENR. Thus, they have no authority to occupy, develop, utilize, or manage the foreshore land upon which their structures illegally stand. In fact, the DENR recognized this illegal occupancy of foreshore land and had consequently issued Notices to Vacate to spouses Calimlim who invariably ignored them. To be sure, spouses Calimlim's obstruction of and unauthorized occupation and use of the foreshore land equate to a public nuisance.

Worse, the hazardous manner by which spouses Calimlim are operating their business has been especially injurious to spouses Goño and their guests, who have specifically complained about the obnoxious activities of spouses Calimlim in the area. Unclean water from the toilet seeps into the dining area of Villa Alexandra and underground, contributing to the offensive odor affecting the quality of the air breathed in by spouses Goño, their guests, and other people in the area. As established on record, these people and the adjacent establishments are constantly exposed to the threat of conflagration due to spouses Calimlim's open-fire kitchen. On one occasion, the fire had nearly engulfed the structures and the nearby areas and was quelled only because spouses Goño were equipped with a fire extinguisher. As for spouses

⁶⁰ DENR Administrative Order No. 2004-24 (2004), sec. 2(a).

⁶¹ *Villanueva v. Castañeda*, 238 Phil. 136 (1987) [Per J. Cruz, First Division].

⁶² Commonwealth Act No. 141 (1936), sec. 61 states:

SECTION 61. The lands comprised in classes (a), (b), and (c) of section fifty-nine shall be disposed of to private parties by lease only and not otherwise, as soon as the President, upon recommendation by the Secretary of Agriculture, shall declare that the same are not necessary for the public service and are open to disposition under this chapter. The lands included in class (d) may be disposed of by sale or lease under the provisions of this Act.

⁶³ DENR Administrative Order No. 2004-24 (2004), sec. 4 states:

The following may apply for a Foreshore Lease Agreement:

1. Any Filipino citizen of legal age; and
2. Corporations, associations or partnerships duly constituted and organized under the laws of the Philippines; at least sixty percent (60%) of the capital is owned by Filipino citizens.

⁶⁴ DENR Administrative Order No. 2004-24 (2004), sec. 2 (c) states:

Foreshore Lease Agreement (FLA) -- is an agreement executed by and between the DENR and the applicant to occupy, develop, utilize, and manage the foreshore lands. It may also cover marshy lands or lands covered with water bordering upon the shores or banks of navigable lakes or rivers.

Calimlim's rest house, it was also erected without the necessary building permit, thus putting in question its structural integrity and its consequent danger to the life and limbs of spouses Calimlim themselves and their own guests, and the other people staying in the adjacent establishments.⁶⁵ Verily, the obstruction caused by spouses Calimlim's structures poses an immediate interference with the safety and property of those concerned, including spouses Goño. As it was though, apart from spouses Calimlim's bare denial, they failed to present any piece of evidence to controvert the claims and proofs adduced by spouses Goño.

As correctly found by the Court of Appeals, spouses Goño exhausted the available remedies available to them by reaching out to the Department of Tourism and the Office of the President. They tried to course their complaint through the local government, but to no avail. They were then constrained to file this civil action on account of the subject public nuisance.⁶⁶

Indeed, the record is devoid of any evidence to negate the injuries suffered by spouses Goño for over a decade already as a result of the subject public nuisance. We therefore agree with the Court of Appeals that temperate damages⁶⁷ in the amount of PHP 10,000.00 should be awarded to spouses Goño in the absence of proof of the specific amount of the business losses they suffered. We likewise sustain the awards of moral damages,⁶⁸ exemplary damages,⁶⁹ and attorney's fees⁷⁰ each in the amount of PHP 10,000.00. All monetary awards shall earn 6% legal interest per annum.⁷¹

ACCORDINGLY, the Petition is **DISMISSED**. The Decision dated September 13, 2023 and Resolution dated February 1, 2024 of the Court of Appeals in CA-G.R. CV No. 116735 are **AFFIRMED**.

SO ORDERED."


AMY C. LAZARO-JAVIER
Associate Justice

⁶⁵ *Rollo*, pp. 67-73.

⁶⁶ CIVIL CODE, art. 703.

⁶⁷ CIVIL CODE, art. 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be provided with certainty.

⁶⁸ CIVIL CODE, art. 2217. Moral damages include: physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

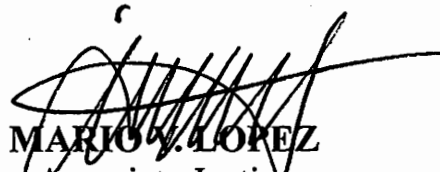
⁶⁹ CIVIL CODE, art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

⁷⁰ CIVIL CODE, art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
(1) When exemplary damages are awarded[.]

⁷¹ *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*, G.R. No. 225433, September 20, 2022 [Per J. Leonen, *En Banc*].

WE CONCUR:

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson



MARIO V. LOPEZ
Associate Justice




JHOSEP V. LOPEZ
Associate Justice



ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

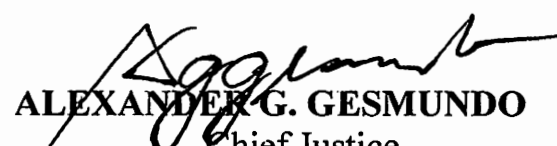
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

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



ALEXANDER G. GESMUNDO
Chief Justice

