



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PABLO PUA,

Petitioner,

G.R. No. 173336

Present:

- versus -

CARPIO, J.,
Chairperson,
BRION,
PERALTA,*
BERSAMIN,** and
PEREZ, JJ.

LOURDES L. DEYTO, doing business
under the trade name of “JD Grains
Center”; and JENNELITA DEYTO
ANG a.k.a. “JANET ANG,”
Respondents.

Promulgated:

NOV 26 2012 *HW Cabalaguer*

X-----X

DECISION

BRION, J.:

Before us is the petition for review on *certiorari*,¹ filed by Pablo Pua under Rule 45 of the Rules of Court, assailing the decision² dated February 23, 2006 and the resolution³ dated June 23, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 84331. The CA affirmed the order⁴ dated January

* Designated as Additional Member in lieu of Associate Justice Estela M. Perlas-Bernabe per Special Order No. 1377 dated November 22, 2012.

** Designated as Additional Member in lieu of Associate Justice Mariano C. del Castillo per Raffle dated November 26, 2012.

¹ *Rollo*, pp. 9-28.

² *Id.* at 30-43.

³ *Id.* at 45-46.

⁴ Records, pp. 189-191.

3, 2005 of the Regional Trial Court (*RTC*), Branch 19, Manila, in Civil Case No. 00-99353 which dismissed the case for failure to prosecute.

The Antecedent Facts

Pua is engaged in the business of wholesale rice trading. Among his clients was respondent Jennelita Ang, allegedly operating under the business and trade name of JD Grains Center. In October 2000, Pua delivered to Ang truckloads of rice worth ₱766,800.00. Ang paid Pua through two (2) postdated checks dated November 4, 2000 and November 6, 2000. When the checks fell due, Pua tried to encash them, but they were dishonored because they were drawn from a closed account.

Pua immediately went to Ang's residence to complain. Unfortunately, he was only able to talk to Ang's mother and co-respondent, Lourdes Deyto, who told him that Ang had been missing. Unable to locate Ang, Pua demanded payment from Deyto, but she refused to pay.

On November 24, 2000, Pua filed a complaint⁵ with the RTC for **collection of sum of money with preliminary attachment against Ang and Deyto**, as co-owners of JD Grains Center. The complaint alleged that the respondents were guilty of fraud in contracting the obligation, as they persuaded Pua to conduct business with them and presented documents regarding their financial capacity to fund the postdated checks.

On November 28, 2000, the RTC issued an order for the issuance of a writ of preliminary attachment upon an attachment bond of ₱766,800.00. Since Ang could not be found and had no available properties to satisfy the lien, the properties of Deyto were levied upon.

Summons was duly served on Deyto, but not on Ang who had absconded. On April 16, 2001, Deyto submitted her answer with special and affirmative defenses.⁶ On May 8, 2001, Deyto filed a “Motion to Set Hearing of Defendant’s Special and Affirmative Defenses,” which was in the nature of a motion to dismiss.⁷ In an order dated July 12, 2001, the RTC denied Deyto’s motion to dismiss, stating that:

The allegations raised by defendant Lourdes Deyto as special and affirmative defenses are largely evidentiary in nature and therefore can be threshed out in a trial on the merit. Consequently, the prayer to dismiss the complaint upon these grounds, is hereby Denied.⁸

After Pua and Deyto filed their respective pre-trial briefs, the case was set for pre-trial conference on November 13, 2001. On the scheduled date, the RTC ordered the resetting of the pre-trial conference to January 22, 2002, upon the parties’ agreement.⁹ The RTC, upon motion by Pua, also ordered the sheriff to submit the return of summons for Ang.

The summons by publication to Ang

Since service of summons could not be effected on Ang, Pua moved for leave of court to serve summons by publication on Ang on January 8, 2002.¹⁰ The RTC granted the motion in an order dated January 11, 2002.¹¹

By March 2002, Pua’s counsel manifested that the summons for Ang remained unpublished; the RTC accordingly cancelled the pre-trial scheduled on March 5, 2002.¹²

⁵ *Rollo*, pp. 258-267.

⁶ *Id.* at 238.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Records*, p. 94.

¹⁰ *Id.* at 97-98.

On May 17, 2002, Pua again filed a manifestation that as early as April 17, 2002, he had already paid ₱9,500.00 to Manila Standard for the publication of the summons on Ang, but it failed to do so.¹³ This prompted the RTC to issue an order directing Manila Standard to explain why the summons was not published despite payment of the corresponding fees.¹⁴ On May 30, 2002, Manila Standard explained¹⁵ to the trial court that when Pua paid the publication fee, he issued a specific order to hold the publication until he ordered otherwise. Eventually, the summons for Ang was published in the May 31, 2002 edition of the Manila Standard.

On January 24, 2003, more than (6) months after the publication of summons for Ang, the case was archived for inactivity.¹⁶ Since neither party filed any further motions, the RTC dismissed the case for the plaintiff's lack of interest to prosecute on October 1, 2004.¹⁷

On November 3, 2004, Pua submitted a motion for reconsideration and a motion to declare Ang in default. The RTC, however, denied the motion in an order dated January 3, 2005; it added that the dismissal of the main case amounts to the dismissal of the motion to declare Ang in default.

Pua appealed the case to the CA. He argued that the reason for the delay in prosecuting the case was the untimely death of his counsel – Atty. Kamid Abdul. He added that he had shown interest in the case by securing the properties of Deyto; paying the annual premium of the attachment bond

¹¹ Id. at 101.

¹² Id. at 113.

¹³ Id. at 116-118.

¹⁴ Id. at 120.

¹⁵ Letter addressed to Hon. Zenaida R. Daguna, Regional Trial Court, Branch 19, Manila; *rollo*, p. 151.

¹⁶ Records, p. 129.

¹⁷ Id. at 133.

for the years 2002, 2003, and 2004; and causing the publication of summons on Ang.

On February 23, 2006, the CA denied Pua's appeal. While the CA recognized some of Pua's actions in prosecuting the case, it still found that the totality of the surrounding circumstances of the case pointed to gross and immoderate delay in the prosecution of the complaint.¹⁸ Pua moved for reconsideration, which the CA denied in its resolution dated June 23, 2006.

The Petition

Pua now questions the CA rulings before us. He insists that it was the untimely demise of his counsel that created the hiatus in the prosecution of the case. He adds that he has consistently paid the annual premiums of the attachment bond and has also served summons by publication on Ang. He also questions the delay in the filing of Deyto's answer.

Pua pleads that the case be decided on the merits and not on mere technicalities. He contends that he has adequately shown his interest in pursuing his meritorious claim against the respondents before the RTC; and the RTC and the CA committed patent error in dismissing his case for his alleged lack of interest.

For her part, Deyto reiterates that the numerous delays involved in this case warrant its dismissal for failure to prosecute. *First*, the motion to serve summons by publication on Ang was filed about four hundred (400) days after the filing of the complaint; *second*, the delay of seventy-seven (77) days before the case was set for pre-trial; and *third*, the delay of almost four (4) years in the prosecution of the case.

The Issue

The issue centers on **whether the plaintiff incurred unreasonable delay in prosecuting the present case.**

The Court's Ruling

We deny the petition for lack of merit.

We agree with the finding that Pua committed delay in prosecuting his case against the respondents. We clarify, however, that Pua's delay is limited to his failure to move the case forward *after the summons for Ang had been published in the Manila Standard*; he could not be faulted for the delay in the service of summons for Ang.

A 13-month delay occurred between the filing of the complaint and the filing of the motion to serve summons by publication on Ang. This delay, however, is attributable to the failure of the sheriff to immediately file a return of service of summons. The complaint was filed on November 24, 2000, but the return of service of summons was filed only on January 3, 2002, after the RTC ordered its submission and upon Pua's motion.¹⁹

Under Section 14, Rule 14 of the Rules of Court, service of summons may be effected on a defendant by publication, with leave of court, when his whereabouts are unknown and cannot be ascertained by diligent inquiry. The Rules of Court provides:

¹⁸ *Rollo*, pp. 36-37.

¹⁹ Records, p. 94.

SEC. 14. *Service upon defendant whose identity or whereabouts are unknown.* – In **any action** where the defendant is designated as an unknown owner, or the like, or **whenever his whereabouts are unknown and cannot be ascertained by diligent inquiry, service may, by leave of court, be effected upon him by publication** in a newspaper of general circulation and in such places and for such time as the court may order. [emphases ours]

In *Santos, Jr. v. PNOC Exploration Corporation*,²⁰ the Court authorized resort to service of summons by publication even in actions *in personam*, considering that the provision itself allow this mode in *any* action, *i.e.*, whether the action is *in personam*, *in rem*, or *quasi in rem*. The ruling, notwithstanding, there must be prior resort to service in person on the defendant²¹ and substituted service,²² and proof that service by these modes were ineffective before service by publication²³ may be allowed for defendants whose whereabouts are unknown, considering that Section 14, Rule 14 of the Rules of Court requires a diligent inquiry of the defendant's whereabouts.²⁴

Until the summons has been served on Ang, the case cannot proceed since Ang is an indispensable party to the case; Pua alleged in his complaint that the respondents are co-owners of JD Grains Center.²⁵ An indispensable party is one who must be included in an action before it may properly go forward. A court must acquire jurisdiction over the person of indispensable parties before it can validly pronounce judgments personal to the parties. The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.²⁶

²⁰ G.R. No. 170943, September 23, 2008, 566 SCRA 272.

²¹ RULES OF COURT, Rule 14, Section 6.

²² *Id.*, Section 7.

²³ *Id.*, Section 14.

²⁴ *Mangila v. Court of Appeals*, 435 Phil. 870, 882 (2002).

²⁵ *Rollo*, p. 259.

After the summons for Ang was published on May 31, 2002 and the Affidavit of Service was issued by Manila Standard's Advertising Manager on June 3, 2002, no further action was taken on the case by Pua. Even after the RTC issued its order dated January 24, 2003 to archive the case, Pua made no move to have the case reopened. More than a year after the case was sent to the archives (October 1, 2004), the RTC decided to dismiss the case for Pua's lack of interest to prosecute the case. It was only after Pua received the order of dismissal that he filed his motion for reconsideration and motion to declare Ang in default.²⁷

We give scant consideration to Pua's claim that the untimely demise of his counsel caused the delay in prosecuting the case. Pua had employed the services of a law firm;²⁸ hence, the death of one partner does not excuse such delay; the law firm had other lawyers who would take up the slack created by the death of a partner. The more relevant rule is that a client is bound by the action of his counsel in the conduct of his case; he cannot complain that the result of the litigation could have been different had the counsel proceeded differently.²⁹

Moreover, Pua had also secured the services of another law firm even before the death of Atty. Kamid Abdul.³⁰ In fact, this second law firm signed the formal appearance in court on October 15, 2001.³¹ To our mind, with two (2) law firms collaborating on the case, no reason exists for delay if only Pua had been more vigilant.

²⁶ *Regner v. Logarta*, G.R. No. 168747, October 19, 2007, 537 SCRA 277, 289.

²⁷ Dated November 3, 2004; records, pp. 137-141.

²⁸ Abdul & Maningas Law Offices; *rollo*, p. 201.

²⁹ *United States v. Umali*, 15 Phil. 33, 35 (1910).

³⁰ Cruz Durian Alday & Cruz Matters; records, p. 74.

³¹ *Ibid.*

Section 3, Rule 17 of the Revised Rules of Court authorizes the dismissal of a case when the plaintiff fails to prosecute his action for an unreasonable length of time:

SEC. 3. *Dismissal due to fault of plaintiff.* — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or **to prosecute his action for an unreasonable length of time**, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. **This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.** [emphases ours; italics supplied]

Once a case is dismissed for failure to prosecute, the dismissal has the effect of an adjudication on the merits and is understood to be with prejudice to the filing of another action unless otherwise provided in the order of dismissal.³²

In this case, Pua failed to take any action on the case after summons was served by publication on Ang. It took him more than two years to file a motion to declare Ang in default and only after the RTC has already dismissed his case for failure to prosecute. That Pua renewed the attachment bond is not an indication of his intention to prosecute. The payment of an attachment bond is not the appropriate procedure to settle a legal dispute in court; it could not be considered as a substitute for the submission of necessary pleadings or motions that would lead to prompt action on the case.

WHEREFORE, the foregoing premise considered, this present petition is **DENIED**. Accordingly, the decision and the resolution of the Court of Appeals in CA-G.R. CV No. 84331 are hereby **AFFIRMED**.

³² *Insular Veneer, Inc. v. Judge Plan*, 165 Phil. 1, 11-12 (1976); *Malvar v. Pallingayan*, No. L-24736, September 27, 1966, 18 SCRA 121, 124; *Rivera v. Luciano*, No. L-20844, August 14, 1965, 14 SCRA 947, 948; and *Guanzon, et al. v. Mapa*, 117 Phil. 471, 472-473 (1963).

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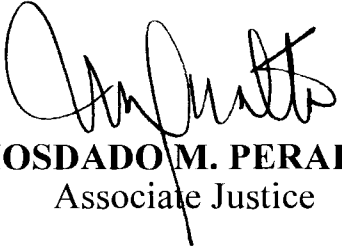
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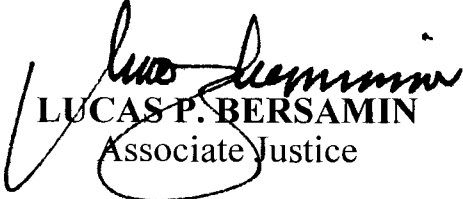
SO ORDERED.

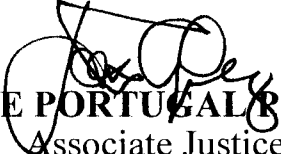

ARTURO D. BRION
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson

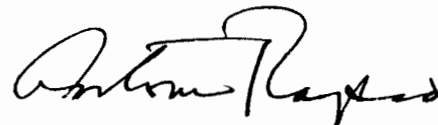

DIOSDADO M. PERALTA
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


JOSE PORTUGAL PEREZ
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.



ANTONIO T. CARPIO

Associate Justice
Chairperson, Second Division

CERTIFICATION

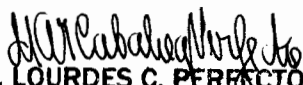
Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO

Chief Justice

CERTIFIED TRUE COPY:



MA. LOURDES C. PERFECTO
Division Clerk of Court
Second Division