

SECOND DIVISION

[G.R. No. 173336, November 26, 2012]

**PABLO PUA, PETITIONER, VS. LOURDES L. DEYTO, DOING
BUSINESS UNDER THE TRADE NAME OF "JD GRAINS CENTER";
AND JENNELITA DEYTO ANG A.K.A. "JANET ANG,"
RESPONDENTS.**

D E C I S I O N

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 decision^[2] dated February 23, 2006 and the resolution^[3] dated June 23, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 84331. The CA affirmed the order^[4] dated January 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 P766,800.00. 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 complaint^[5] 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 P766,800.00. 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]

On May 17, 2002, Pua again filed a manifestation that as early as April 17, 2002, he had already paid P9,500.00 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 explained^[15] 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 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