

## FIRST DIVISION

**[ G.R. No. 113657, January 20, 1997 ]**

**P. M. PASTERA BROKERAGE, PETITIONER, VS. COURT OF  
APPEALS AND AMERICAN INTERNATIONAL ASSURANCE  
COMPANY, LTD., RESPONDENTS.  
D E C I S I O N**

**BELLOSILLO, J.:**

On 7 March 1979 Roche Pharmaceuticals and Chemicals, Ltd., shipped from Hongkong for delivery to its consignee, United Laboratories, Inc., in Manila a cargo consisting of 18 drums and 1 pallet of harmless bulk chemicals, under Bill of Lading No. 1153-4, on board the vessel M/S Benrinnes owned and operated by Ben Line Steamers, Ltd. The shipment was insured with respondent American International Assurance Company, Ltd., in the amount of \$48,903.80 against all risks, under Marine Risk Note No. IN-456612-MC-144.

On 17 July 1979 the vessel arrived at the port of Manila and discharged the shipment to arrastre operator E. Razon, Inc. When the consignee's representative, Starglow Customs Brokerage Corporation (STARGLOW), claimed the shipment it was informed that it was already withdrawn from E. Razon, Inc., by petitioner P. M. Pastera Brokerage (PASTERA). The withdrawal, according to the consignee, was without its knowledge and consent. For the loss of the shipment, the consignee claimed it suffered damages in the amount of P379,871.38, which respondent company promptly paid. Consequently, by way of subrogation, respondent company claimed from Ben Line Steamers, Ltd., Citadel Lines, Inc., as agent of the vessel, E. Razon, Inc., and petitioner the amount it paid to the consignee. The claim for subrogation was however denied hence respondent company was constrained on 17 March 1980 to sue in the Regional Trial Court of Manila for the recovery of the amount paid.

On 15 September 1984, on joint motion of plaintiff, which is respondent herein, and defendants Ben Line Steamers, Ltd., and Citadel Lines, Inc., which were two of original defendants therein, the complaint as against the latter was dismissed.

On the basis of the documentary and testimonial evidence presented, the trial court found the claim of respondent company meritorious. Thus on 15 March 1991 it ordered E. Razon, Inc., and petitioner to pay respondent company P579,871.38 with legal interest thereon from the date of the filing of the complaint until fully paid, 25% of the claim as attorney's fees, and to pay the costs. <sup>[1]</sup>

On 25 September 1992 respondent Court of Appeals sustained the trial court. On 13 January 1994 the appellate court denied the motion to reconsider its decision.

Petitioner imputes the following errors to respondent Court of Appeals: (a) for holding that the documentary evidence points liability to petitioner; (b) for failing to

resolve the issue on petitioner being deprived of procedural due process; and, (c) for ordering petitioner to pay P579,871.38 although the claim was only for P379,871.38.

Petitioner argues that the findings of the trial court, as affirmed by the appellate court, are not supported by the evidence on record. Thus, (a) Exh. "G," the Survey Report, clearly shows that the covering permit to deliver imported goods was merely stamped "P. M. Pastera Brokerage Corporation." The Report further states: "We inquired with Mr. Pastera of Pastera Brokerage Corporation who disclaimed any knowledge of the alleged withdrawal of the cargo, that his firm has no shipment to handle on this particular call of the ocean carrier concerned;" (b) Exh. "I," the letter of STARGLOW to the Commissioner of Customs, states that Entry No. 70814 was "faked," and when confronted, petitioner denied any knowledge thereof; (c) Exh. "J," the letter of STARGLOW to the consignee, reiterates that Entry No. 70814 was "faked" and further shows that said entry had already been used by Certified Brokerage Corporation for a shipment intended for Philippine Manufacturing Corporation; and, (d) Exhs. "K" and "K-1," Gate Pass No. 03648, clearly show that E. Razon, Inc., delivered the subject shipment to an unauthorized party.

We agree with petitioner. There is no preponderance of evidence to support the findings and conclusion of both courts. Petitioner was adjudged liable for the lost shipment based merely on the claim that it was the withdrawing party as shown in the Gate Pass.<sup>[2]</sup> We have scrutinized this piece of evidence. "PASTERA" is indicated therein as the broker. In the space allocated for the representative of the consignee, only a signature, which is illegible, and "10A826" as identification number appear. The space allocated for the driver appears to have been filled up but the entry thereon is not readable.

In a letter dated 7 August 1979 Starglow sought assistance from the Commissioner of Customs concerning the shipment which, based on its preliminary inquiries, was released and delivered under anomalous circumstances to another consignee, thus -

Preliminary inquiries on the subject showed that the above shipment was released and delivered by virtue of Delivery Permit No. 074609, series of 1979,<sup>[3]</sup> and under Entry No. 70814. The said Delivery Permit having been purchased from the Informal Entry Division and Entry No. 70814 carried perforations showing therefore that same had already been utilized for another previous shipment. Said Entry having been utilized by the Certified Brokerage Corporation for a shipment intended to Phil. Mfg. Corp. (PMC). Further check disclosed that the presentor of "faked" Entry No. 70814 represented himself to be from Pastera Brokerage, but upon confrontation with the said Pastera Brokerage, they denied having any knowledge thereof. The presentor/checker carries identification bearing No. 10A826.<sup>[4]</sup>

On 23 August 1979 respondent company requested from the Manila Adjusters and Surveyors Company an investigation regarding the lost shipment. In a report dated 24 September 1979 the surveyors found the following -

The eighteen (18) drums and one (1) pallet were verified to have been withdrawn from Warehouse No. 2 of Pier No. 3 on July 19, 1979 covered by Gate Pass No. 03648 and Customs Entry No. 20814. Further verification disclosed the covering Permit to Deliver Imported Cargoes was stamped "P. M. Pastera Brokerage