

Recientes decisiones americanas en relación con Mexico

James A. Graham **

Socio, Lobo, Graham y Asociados S.C.

El Tribunal de Distrito de California rindió un fallo muy importante en el asunto *Televisa*¹, por el cual aclara que no es posible de notificar una parte mexicana afuera de los mecanismos de la Convención de La Haya sobre la Notificación al Extranjero, y eso porque:

“ When Mexico filed its declarations with the Ministry, the Ministry prepared an erroneous “courtesy translation” of Mexico’s declarations from the original Spanish text into English, which makes it appear that Mexico did not object to certain of the alternative methods of service under Article 10.

Unfortunately, a mistake occurred in the English courtesy translation of Mexico’s Article 10 declaration, making it appear that Mexico’s opposition applies only to the alternative methods of service of process under Article 10 when attempted ‘through diplomatic or consular agents. Apparently relying on the English courtesy translation, a section on the U.S. State Department’s website, entitled “International Judicial Assistance in Mexico,” states that service may be accomplished in Mexico by international registered mail or by personal service because “[t]here is no provision in Mexico law specifically prohibiting service” by these methods.

The Court is bound by the original Mexican declaration, not the “courtesy translation,” the U.S. State Department’s website, or the state or district court decisions relying on the courtesy translation and/or the U.S. State Department’s website. Accordingly, based on the original Mexican declaration, the Court concludes that Mexico has in fact objected to service through the alternative methods specified in Article 10 of the Hague Convention, and that service through Mexico’s Central Authority is the exclusive method by which Plaintiff can serve Televisa in Mexico”.

** James can be contacted at: graham@lobo-graham.com.

¹ <http://lawyersusaonline.com/wp-files/pdfs/televisa.pdf>.

Ahora bien, no obstante la mencionada decisión *Televisa*, otra decisión de la Corte de Apelación de California llega a recordar por el fallo *Yamaha* que también es legal la notificación hecha a una filial en Estados Unidos de una empresa extranjera [mexicana]:

“On review, however, it turns out that, yes, it really is that easy. And not only that, there is nothing this court, as a matter of California common law, can do about it. We are a court under authority, and there is a non-overruled, non-distinguishable California Supreme Court case, *Cosper v. Smith & Wesson Arms Co.* (1959) 53 Cal.2d 77, that makes service on the California representative of a foreign parent valid — that is, valid as to the foreign parent — under California law. And not only that, but there is a 1988 federal United States Supreme Court case, *Volkswagenwerk Aktiengesellschaft v. Schlunk*, supra, 486 U.S. 694 (*Schlunk*), that says when service is valid under state law on the American subsidiary of a foreign manufacturer, there is no need to serve papers in accord with the Hague Service Convention. Accordingly, we have no choice but to deny the petition for writ of mandate”².

En lo que concierne la decisión *Osorio v. Dole Food Company* (SDFla, 2009) (aun no publicada), se establece que no se dará ejecución a una decisión extranjera si el procedimiento judicial en el país de origen no corresponde al “*international due process*” (en este caso, la sentencia provenía de los tribunales nicaragüenses):

“the evidence before the Court is that the judgment in this case did not arise out of proceedings that comported with the international concept of due process. It arose out of proceedings that the Nicaraguan trial court did not have jurisdiction to conduct. During those proceedings, the court applied a law that unfairly discriminates against a handful of foreign defendants with extraordinary procedures and presumptions found nowhere else in Nicaraguan law. Both the substantive law under which this case was tried, Special Law 364, and the Judgment itself, purport to establish facts that do not, and cannot, exist in reality. As a result, the law under which this case was tried stripped Defendants of their basic right in any adversarial proceeding to produce evidence in their favor and rebut the plaintiffs’ claims. Finally, the judgment was rendered under a system in which political strongmen exert their control

²<http://lawzilla.com/blog/2009/09/21/yamaha-motor-v-superior-court-of-orange-county/>.

over a weak and corrupt judiciary, such that Nicaragua does not possess a 'system of jurisprudence likely to secure an impartial administration of justice.'"

En otras palabras, no es siempre de buena estrategia de ganar a "cualquier costo" un litigio en Mexico, visto que si no se cumplió con los requisitos procesales mínimos de los norteamericanos, la decisión no tendrá efectos en los Estados Unidos³.

³Para más detalles sobre el mecanismo de ejecución de sentencias en los Estados Unidos, véase nuestro curso "Lectures on the US Legal System, 3rd ed., p. 526 sq (<http://www.lobo-graham.com/libreria/graham-us3.pdf>).