

Two Cases on the Recognition of Authentic Acts

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For the Common Law practitioners, the law is what the judge says.

In my short statement on the recognition of Authentic Acts, I only refer to two judicial decisions, one from a Spanish Court of Appeal and another from the European Court of Justice.

The Spanish case was taken by the provincial Court of Almeria, in Andalusia, southern Spain. It voided a decision of the Court of first instance that had refused recognition of an authentic act of a British Notary Public. The Court of First Instance had acknowledged the representations made by the British Notary claiming that his original document was null and void due to a series of errors made by his own Office. In fact, the reason for the British

Notary Public's act of self-denial might have been that under Spanish law the recognition of the validity of the notarial act would have caused damage to his British client by forcing him to sell a property to the Spanish lessee at the low price officially stated in the deed.

The Spanish Court of Appeal refused to grant recognition to the document issued by the British Notary. It was not willing to accept as valid the long chain of "errors" claimed by the Notary Public in order to challenge the validity of his own case.

The second case I refer to is the *Unibank* decision of the European Court of Justice that established the requirements for the recognition of an Authentic Act. The Act must be issued by an official invested of public authority. It must go beyond the mere authentication of the signatures of the parties in order to produce real legal effects. And, finally, it couldn't produce

effects in the third country beyond those recognized in the country of origin.

The Spanish decision points out to the difficulties arising from the recognition of Authentic Acts originated in jurisdictions which are rather easy as to validity of formal requirement such type of Acts. The decision of the European Court of Justice on the other hand, a solid ground-work for the development of a consistent common European law on the subject works for a European law on the subject. Future European legislation in this area should follow on the steps of this latter decision. Recognition of foreign Acts may have serious legal consequences. It deserves careful legal scrutiny.