

6 Big Mistakes People Make in Mexican Lawsuits

It is 8:00am and you are drinking your morning coffee and there is a knock at the door. Jehovah's Witnesses? That neighbor wanting to borrow a cup of sugar? Who could it be? Oh it is Spencer... but wait... there are police are there and a bunch of Mexican guys in suits as well as a tow truck. What is going on? Would you refuse to come out? Would you come out to find out what was going on, then remember you owe money to a hospital or person and then run back inside and slam the door and hide? That could cost you your door as many court orders for embargos have orders to enter forcefully and if not and you want to hide inside then the plaintiff's attorney will just apply for such an order and break in to serve you within a few weeks. **That's mistake number 1.**

As a Mexican attorney (with my *cédula profesional*), litigator, and official court translator, I have accompanied court officials on many different court procedures involving foreigners. It's been my experience that most foreigners don't know how the Mexican legal system works. And when that's compounded by being represented by bad attorneys, who don't prepare their clients well or monitor the strict timelines involved, many foreigners don't get good results as defendants in a lawsuit, or even plaintiffs for that matter. To try to raise awareness a little, I've developed a list of common mistakes people make and information so that people know what to expect in civil litigation as well as know what their attorneys should be doing.

If you owe someone money (in a tenant/landlord or hospital promissory note dispute, for example,) and they decide to file a lawsuit, one of the first things that happens in Mexico is that the plaintiff (the one you owe money to) can get a "pre-judgment right to attach" order (called an embargo) to secure collateral from you for the value of what they say you owe them well actually up to 3 times the amount in dispute. The reason for that is so you won't get rid of your assets and plead poverty if you lose the suit. When you get served with the lawsuit papers at your door, the server (called a notifier in Mexico), usually accompanied by the police, plaintiff's attorney and a tow truck to get your car or a truck to take seized items, has a right to enter your house or to force entry as set out in the courts order admitting the lawsuit and approving the embargo, and they will not pay for damages (unless at the end you won the suit). The court personnel conducting the procedure should also be accompanied by a court authorized and appointed translator if you don't speak the Spanish language well enough to understand the legal issues of what is going on. If there isn't, you can appeal the lawsuit later, and get it kicked out where they would reset the case to the time where you were served. **Not knowing this is mistake number 2.**

Once there, the court execution secretary will probably ask what property you want to place for collateral. That could be your TV, your jewelry, your car, your house—anything the plaintiff knows you have of value. If you stutter, refuse or don't tell them then the plaintiff's attorney may choose which items as defendants gets the first opportunity and if they refuse then they lose that right. They can either take the merchandise with them, or notify you that the property is collateral in the lawsuit and cannot be disposed of and you will be the judicial depository with criminal penalties if you dispose of the property. But you don't have to accept that. **That's mistake number 3.** You have the right to decide what can be embargoed. Do they want to take your car because you owe someone 5,000 pesos? Tell them they can embargo the TV, instead. You should also be aware that there are legal exclusions to what can be embargoed: basic necessities—such as tools of your trade and home furnishings among other items—cannot be taken.

At this point, you'll probably have panicked and called your lawyer, who says he'll be right over. That usually doesn't work. First, the notifier or court execution secretary is not going to wait around for any period of time nor will they want to argue with some lawyer who may or may not know what he is talking about and who will not be able to change or stop what is happening. He wants to get the merchandise written, noted and / or loaded up and go. Second, no lawyers will show up in the 5 minutes they said they'd arrive and the court will not wait.

So, what's your best bet? If you have the money the person says you owe, pay it on the spot, show receipts that it was paid and if you give cash or a check and make sure you get a receipt signed by the attorney for the plaintiff. You can always file a lawsuit of your own to get the money back, if it's worth it to you but some attorneys have been known to play games with items and hide them while they file appeals to pressure defendants into accepting a settlement. If you don't have the money, and if you've agreed to have something embargoed (especially if they take it away), take a photo of it first to make sure you get back exactly what they took (if you win the lawsuit). All property taken or signaled in the embargo will be listed in detail on the written statement made by the court execution secretary and you will receive a copy.

The paper you've been served will state the date by which you (your attorney) has to file a response to the suit, which will be 5 days for summary cases [landlord tenant often falls under this category] and 8 days for regular cases under Jalisco State law and causes of action and 8 days for executive action [these are the most common for collection of pagares or promissory notes] s, 9 for oral trials and 15 for regular mercantile suits under the Federal Commerce Code, remember all days start the day after service and are court business days. This is a much shorter period of time than north of the border, where the norm is 30 days and where your time to respond is the later of the 30 days period or when the opposing party file a request to enter default with the court. You will want to gather all the evidence and witnesses you can to defend yourself during the short amount of time you have to respond to list them in the response. **Not doing this is mistake number 4.** No delays of time are granted and failing to file a response within the time permitted by law will have you be in default and all the allegations made against you will be presumed true. If the time to respond has passed and the other side has not requested the court take your default, the court would still reject any response after the statutory time limits as untimely. Also in most cases you must list evidence and witnesses known to you in your response as any evidence offered after making your written response may be rejected by the court or objected to by the other party.

When a hearing is subsequently scheduled, make sure your attorney takes the time to prepare you and your witnesses properly. This doesn't happen in a surprisingly large number of cases. The defendant and the witnesses go into the hearing cold, and are overwhelmed or confused by the proceedings and by the kinds of questions being asked. The party or witness needs to know what the issues in dispute are so they can reasonably predict the questions they will be asked. People who do not speak Spanish will have the right to have a translator appointed by the court present to translate as well as read to them at the end the record made of the hearing. The party offering the evidence pays the translators fees. This is **mistake number 5** that people often make.

When the hearing day comes, if you're late (even 10 minutes), you will not be able to have that evidence as part of the court record from which the judge will issue a ruling and the plaintiff can win the suit as you will have less evidence to bolster your case. **That's mistake number 6.** Almost everything in Mexico runs late except the court system. If you arrive on time, but your witnesses don't, you will lose their testimony. There's no make-up time or delays save for a medical emergency. So, when the judge

eventually decides on the case, if there is little or no evidence, the opposing side may win if they met their evidentiary burden.

These are the most common mistakes people make when they have to defend themselves in a lawsuit. It's important for people to know their rights and how the legal system in Mexico can work for them or against them.

Here is a list of most of the procedures people will have with the Mexican courts as a party or affected third party

Emplazamiento - This is where the notifier serves the lawsuit on the defendant. You will be asked to identify yourself when they arrive at your door as they wouldn't want to divulge personal information to third parties nor serve the wrong person. You are under no obligation to give them your ID nor sign anything although being uncooperative in the process may cost you more time and money in the end as well as line the pockets of the attorneys. If upon first visiting your home you are not there and someone is there, the notifier will leave a citatorio or request to be there the next day and if you are not, then they may legally serve papers on whomever is at your home whether it be a family member or someone working there and then the clock starts ticking. If you are there then this is not the time to argue your case as any response and evidence and defenses must be in the proper written format and timely presented to the court.

Notificacion - This is where the notifier notifies a person about some court resolution that may affect them.

Embargo - This is where they come to ask you to pay a debt, then if not paid they proceed to designate property as collateral or levy or seize it and then after serve you with the lawsuit giving you the 5 or 8 days to respond and then they serve you with the suit (see emplazamiento above).

Hearings:

Ratificacon de la Solicitud - For mutual divorces where the parties acknowledge the request for divorce they submitted to the court.

Avenimiento - This is where the judge or conciliation secretary asks the parties if there is any way to salvage their marriage and confirms they really want to get a divorce.

Conciliacion - This is where the court secretary ask the plaintiff to make a settlement offer to the defendant and to see if the defendant accepts and then asks the defendant to make a settlement offer to the plaintiff and see if the plaintiff accepts, if neither party accepts than the court asks the parties if they wish to continue with the judicial process.

Testimonial - This is where a party presents 2 witnesses to support one or many points in their lawsuit or may be used to have 2 people establish that 2 names listed for a person, i.e. Robert Smith and Bob Smith are one in the same person.

Confesional - This is where a party to the case is asked questions by the opposing side. These are most akin to request for admissions in US discovery and if an answer is not clear or an unequivocal denial or evasive then the question is deemed admitted.

Others:

Separacion de Personas - This is what would be known as a "kick out" order in the US where 2 parties live under one roof and one has filed a criminal or civil complaint against the other and the offended party applies to the court to force the other one to leave the residence, they usually are only able to bring a suitcase of clothes, the judge and court secretary will usually both be there as well as the police.

Lectura del Testamento - This is where a will is read with the heirs present where the court declares the validity of the will, the executor and what each heir is entitled to receive in the will.

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