



Arbitration CAS 2021/A/8229 Leeds United Football Club Limited v. RasenBallsport Leipzig GmbH, award of 4 November 2022

Panel: Mr Manfred Nan (The Netherlands), President; Mr Mark Hovell (United Kingdom); Prof. Ulrich Haas (Germany)

Football

Obligation to acquire the services of a player included in a loan agreement

Interpretation of a contract

Principle of “complementary contractual interpretation”

1. Article 18 of the Swiss Code of Obligations seeks first and foremost to establish the intent of the parties and – in case the latter cannot be determined – falls back on an objective interpretation of the contract: *“when assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement”*. This is not materially different from Section 133 of the German Civil Code, which provides that *“when a declaration of intent is interpreted, it is necessary to ascertain the true intention rather than adhering to the literal meaning of the declaration”*.
2. The principle of “complementary contractual interpretation” or *“ergänzende Vertragsauslegung”* applies whenever the parties unintentionally did not consider an issue that later materialized. In that case, it must be examined what the parties reasonably and in good faith would have agreed, if they actually had considered the issue they unintentionally omitted to regulate. The complementary contractual interpretation of the contract must result as a compelling, self-evident consequence from the entire context of what was agreed, so that without the supplement made the result would be in obvious contradiction with what was actually agreed according to the content of the contract. The threshold for the application of “complementary contractual interpretation” is relatively high. While the concept is not vested in any statutory provisions in German or Swiss law, it is recognised and applied equally under German and Swiss law.

I. PARTIES

1. Leeds United Football Club Limited (the “Appellant” or “LUFC”) is a football club with its registered office in Leeds, United Kingdom. LUFC is registered with The Football

Association (the “FA”), which in turn is affiliated to the *Fédération Internationale de Football Association* (“FIFA”).

2. RasenBallsport Leipzig GmbH (the “Respondent” or “RB Leipzig”) is a football club with its registered office in Leipzig, Germany. RB Leipzig is registered with the *Deutscher Fußball-Bund* (the German Football Federation – the “DFB”) which in turn is also affiliated to FIFA.
3. LUFC and RB Leipzig are hereinafter jointly referred to as the “Parties”.

II. INTRODUCTION

4. The present arbitration concerns a dispute between the Parties as to whether LUFC was obliged to purchase the registration rights of X. (the “Player”), a football player of French nationality, from RB Leipzig based on a “*Purchase Obligation*” (the “Purchase Obligation”) included in the loan agreement (the “Loan Agreement”) concluded between the Parties.
5. The key issue in the present arbitration is whether the Purchase Obligation would be triggered by LUFC’s promotion to the Premier League only if this occurred prior to 1 July 2020 or by the end of the season (which was delayed until after 1 July 2020 due to the COVID-19 pandemic). On 22 July 2020, LUFC finished the regular season at the top of the EFL Championship and, on 6 August 2020, LUFC was promoted to the Premier League at the English Premier League Annual General Assembly.
6. The FIFA Players’ Status Committee upheld RB Leipzig’s claim to be paid a transfer fee of EUR 21 million by LUFC in accordance with the Purchase Obligation in the Loan Agreement (the “Appealed Decision”). LUFC is challenging this decision.

III. FACTUAL BACKGROUND

A. Background Facts

7. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties, the hearing and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.
8. On 9 July 2017, the Player and RB Leipzig concluded an employment contract for five seasons, valid until 30 June 2022. The Player played for RB Leipzig for the first two seasons of the employment contract.
9. On 31 August 2019, the Player was loaned by RB Leipzig to the Monegasque football club AS Monaco for one season, i.e. until 30 June 2020.

10. On 23 January 2020, LUFC sent an email to A., the Player's agent (the "Player's Agent"), which contained offers to RB Leipzig and the Player. The offer for RB Leipzig provides, *inter alia*, as follows:

"Subject to contract and the player passing a medical, we would like to make the following offer to Red Bull Leipzig for the loan of the [Player] until 30th June 2020:

- *We will cover all the contract that the player currently has in AS MONACO*
- *Obligation to buy the player at the end of the season on the condition that [LUFC] is promoted to the Premier League for €21,000,000 (inclusive of solidarity) in 3 instalments as follows:*

€7,000,000 on 30th September 2020

€7,000,000 on 30th September 2021

€7,000,000 on 30th September 2022

I would be grateful if you would respectfully consider our offer and come back to me as soon as possible to confirm whether you agree to the above terms".

11. On 24 January 2020, while indicating that he was "still fighting with Monaco", the Player's Agent provided a draft loan agreement to LUFC, including a "Purchase Option" and the Purchase Obligation.
12. On 25 January 2020, RB Leipzig, AS Monaco and the Player concluded a tripartite termination agreement of the Player's loan with AS Monaco.
13. On 25 January 2020, RB Leipzig, LUFC and the Player concluded the tripartite Loan Agreement, by means of which they agreed that the Player would be transferred temporarily from RB Leipzig to LUFC until 30 June 2020. The Loan Agreement contained a "Purchase Option" and the Purchase Obligation, which provide as follows:

"9. Purchase Option: [LUFC] shall be entitled (notwithstanding the case stipulated in clause 10 when [LUFC] shall be obliged) to permanently transfer the Player to [LUFC] with effect as of July 1, 2020 by unilateral, written declaration, which shall be submitted to [RB Leipzig] by May 30, 2020 at the latest.

In this case, a transfer fee in the amount of € 21,000,000 (in words: twenty-one million Euro) shall become due. This amount shall be paid to [RB Leipzig] less any solidarity contribution due to any other club(s) under Annex 5 of the FIFA RSTP (the "Deductions") in three instalments as follows:

€ 7,000,000 (in words: seven million Euro) less any Deductions as of September 30, 2020

€ 7,000,000 (in words: seven million Euro) less any Deductions as of September 30, 2021

€ 7,000,000 (in words: seven million Euro) less any Deductions as of September 30, 2022.

[LUFC] exclusively shall be responsible for any taxes and duties which it incurs in connection with any permanent transfer and shall not apply any withholding taxes to the transfer fee. [RB Leipzig] shall be responsible for any taxes and duties which it incurs in connection with the final transfer or its receipt of the transfer fee.

According to Article 21 of the FIFA Regulations on the Status and Transfer of Players, [LUFC] shall be responsible for the payment of the Solidarity Contribution to the entitled clubs, but shall be allowed to deduct the Solidarity Contribution from any transfer fee and pay only the remaining amounts of the transfer fee to [RB Leipzig]. [LUFC] shall bear the costs for settling any and all claims arising out of Training Compensation as a result of the temporary or permanent transfer of the Player to [LUFC] according to the applicable rules and regulations, provided that any own claims of [RB Leipzig] in regard to training compensation and solidarity contribution shall be settled with the payment of the transfer fee, that therefore shall not be deductible either. In respect of the loan period, the entitlement for solidarity contributions shall be with [RB Leipzig], which [LUFC], upon request of [RB Leipzig], will confirm to any third parties.

10. Purchase Obligation: The abovementioned Purchase Option according to Clause 9 shall be considered to be automatically executed by [LUFC] without a respective notice being required, if and when the following condition precedent occurs:

The [LUFC] 1st men's team is promoted to the Premier League at the end of the 2019/2020 season and thus qualifies for participation in the Premier League in the 2020/2021 season.

If the aforementioned condition precedent occurs, the Purchase Option shall be triggered without any additional declaration and the Player shall be permanently transferred to [LUFC] with effect as of July 1, 2020.

In this case the transfer fee in the amount of € 21,000,000 (in words: twenty-one million Euro) shall become due and shall be paid to [RB Leipzig] less any Deductions within the abovementioned due dates”.

14. On 26 January 2020, the Player concluded an employment contract with LUFC, valid until 30 June 2020.
15. Also on 26 January 2020, the Player and LUFC concluded a deed (the “Deed”), setting out the terms of their employment relationship in case the Purchase Obligation in the Loan Agreement would be triggered, which contained the following condition precedent:

“LUFC’s obligation to enter into an employment contract with the Player following any Permanent Transfer shall be subject to the satisfaction in full of the following conditions precedent on or before the 30 June 2020 (“Conditions Precedent”):

- (i) LUFC being promoted to the Premier League at the end of the 2019/20 season;
- (ii) the Club and RB Leipzig agreeing to enter into a long-term transfer agreement in connection with the Permanent Transfer;

(iii) *the Player being registered with the Club by the EFL and the FA; and*

(iv) *FIFA approving the Permanent Transfer and issuing an International Transfer Certificate in connection with the Permanent Transfer”.*

16. Also on 26 January 2020, the Player and the Player’s Agent entered into a representation agreement (the “Representation Agreement”).

17. Also on 26 January 2020, RB Leipzig entered the Purchase Obligation into FIFA Transfer Matching System (the “FIFA TMS”), which was later “matched” by LUFC:

“verpflichtende Kaufoption gem. Loan Agreement Artikel II. 9. und 10. sofern [LUFC] zum Ende der Saison 2019/2020 in die Premier League aufsteigen sollte”.

Free translation:

“binding Purchase Option pursuant to the Loan Agreement Article II. 9. and 10. if [LUFC] promotes to the Premier League by the end of the season 2019/2020”.

18. On 13 March 2020, the EFL Championship was suspended due to the outbreak of the COVID-19 pandemic.

19. On 7 April 2020, FIFA issued Circular Letter no. 1714 to its member associations, by means of which FIFA addressed the COVID-19 pandemic in a document entitled “COVID-19 Football Regulatory Issues” (the “FIFA COVID-19 Guidelines”).

20. On 24 April 2020, LUFC sent an email to the Player’s Agent (i.e. not directly to RB Leipzig), which, *inter alia*, provides as follows:

“We would like to seek permission from RB Leipzig to extend the loan agreement for [the Player] in order to cover the current season in the event that it is extended beyond 30th June 2020.

We would also need to extend the deadline for the obligation to purchase the [Player] to take us to the end of the season (whenever that may be).

If possible, we would also like to ask for their consideration in changing the instalments due to the financial impact caused by the Covid-19 pandemic.

The instalments are currently as follows:

30th September 2020 € 7,000,000

30th September 2021 € 7,000,000

30th September 2022 € 7,000,000

We would like to propose the following amendment to the agreement:

Total Value £, [sic] 21,000,000 payable in the following instalments:

30th September 2020 € 3,000,000

30th September 2021 € 6,000,000

30th September 2022 € 6,000,000

30th September 2023 € 6,000,000

All other terms of the existing agreement to remain the same.

We would very much appreciate if you would kindly discuss our proposal with RB Leipzig”.

21. LUFc maintains that, on 8 June 2020, Mr Orta, LUFc’s Director of Football, informed the Player and the Player’s Agent that LUFc was not willing to extend the Loan Agreement, because the Player was allegedly unfit and could not train or play to the standard expected by LUFc. LUFc maintains that it had thereby withdrawn its offer of 24 April 2020.
22. On 11 June 2020, FIFA issued Circular Letter no. 1720 to its member associations, by means of which FIFA announced temporary amendments to the FIFA Regulations on the Status and Transfer of Players (the “FIFA RSTP”) and whereby frequently asked questions related to FIFA COVID-19 Guidelines were addressed.
23. On 12 June 2020, RB Leipzig sent an email to LUFc which, *inter alia*, provides as follows:

“We apologize for the late reply to your e-mail to [the Player’s Agent] which we would like to answer as follows:

Topic 1: We would like to seek permission from RB Leipzig to extend the loan agreement for [the Player] in order to cover the current season in the event that it is extended beyond 30th June 2020.

[RB Leipzig]: We can agree to that; we suggest to simply extend the loan period until the last day of [LUFc’s] current season.

Topic 2: We would also need to extend the deadline for the obligation to purchase the player to take us to the end of the season (whenever that may be)!

[RB Leipzig]: We agree that we should amend the purchase obligation being affected as of one day following the end of [LUFc’s] current season.

Topic 3: If possible, we would also like to ask for their consideration in changing the instalments due to the financial impact caused by the Covid-19 pandemic.

[RB Leipzig]: *Unfortunately we cannot agree to that. We have thoroughly discussed the topic internally, but due to our own financial obligations and the impact caused by Covid-19 on ourselves, we are not in the position to change the payment instalments.*

We look forward to your feedback. If you agree, we would provide you with a draft shortly”.

24. On 12 June 2020, LUFC informed the Player, *inter alia*, as follows:

“As discussed, the Club’s coaching and medical staff consider that your current physical condition is such that you will not be fit enough to play for the first team when the 2019/20 season is due to restart. Accordingly, the coaching staff and the Club does not currently require you to train with the first team”.

25. On 13 June 2020, LUFC sent an email to RB Leipzig, which, *inter alia*, provides as follows:

“I refer to the [Loan Agreement], which is due to expire on 30 June 2020.

We had indicated in an email to [the Player’s Agent] on 24 April that we may seek to an extension of the loan and an agreement to vary the terms of the Loan Agreement. However nearly two months passed since the email without receiving a response before today. We have since changed our position and no longer wish to extend the loan or amend the Loan Agreement. Your email of today’s date is therefore redundant.

I am therefore writing to formally notify you that [LUFC] will not be seeking an extension of the Loan Agreement beyond 30 June 2020.

We have communicated this to the [Player] and [the Player’s Agent] who are already aware of our intentions.

I also confirm that [LUFC] does not wish to amend the Loan Agreement. [LUFC] will therefore not be purchasing the Player under the existing terms of the Loan Agreement. Promotion will not have been achieved by 1 July 2020 and further it would be impossible for [LUFC] to complete any transfer by 1 July given the English transfer window will not open until 25 July at the earliest. Any right or requirement to purchase the Player is therefore voided as a result of not being able to effect the transfer by 1 July (and for example the parties being unable to fulfil Clause 12). The Loan Agreement would need to be amended to realise the obligation. However, we do not require the Loan Agreement to be amended and the obligation therefore falls away”.

26. On 15 June 2020, RB Leipzig sent a letter to LUFC, which, *inter alia*, provides as follows:

“[W]e would like to draw your attention to the fact that – contrary to the Purchase option set out in clause 9 of the Loan Agreement – the Purchase Obligation set out in its clause 10 does not leave discretion to [LUFC] whether or not to apply it as the Purchase Obligation applies “automatically”. The Purchase Obligation is linked to the condition precedent that [LUFC] is promoted to the Premier League at the end of the 2019/2020 season. It is not determined that this condition must be fulfilled until a certain date. As far as you might invoke that according to the further wording of clause 10,

the permanent transfer based on the Purchase Option shall take place with effect on July 1, 2020, this does not support the conclusion that [LUFC] can withdraw from it.

[...]

Therefore, it is the mandatory result of an adequate interpretation of the existing agreement under the specific circumstances to conclude that July 1 is simply deferred to July 25, 2020 (as being the first day of the English transfer period to guarantee a seamless process between the loan and the date of purchase).

Therefore, with all due respect, RB Leipzig sees your communication as a pure effort to escape from the obligation to pay the transfer fee”.

27. On 16 June 2020, the Player sent a letter to LUFC with RB Leipzig in copy, which, *inter alia*, provides as follows:

“I confirm and fully agree in all the terms the Letter sent to you today 16th June 2020 by [RB Leipzig] in answer to your Letter dated 13rd June 2020.

According to the Loan Agreement, the terms of my employment FA registered contract and the FIFA Circulars 1714 and 1720, you have the obligation to extend the loan until the end of the season 2019-2020 and you have also a Purchase Obligation according to Clause 10 of the [Loan Agreement] when [LUFC’s] 1st men’s team is promoted to the Premier League at the end of the 2019/2020 season and thus qualifies for participation in the Premier League in the 2020/2021 season”.

28. On 19 June 2020, the EFL informed its members’ clubs on “Covid-19 and Player Related Matters”.

29. On 20 June 2020, i.e. approximately three months after its suspension, the EFL Championship resumed.

30. On 22 June 2020, LUFC sent a letter to RB Leipzig, which, *inter alia*, provides as follows:

“Our position remains very clear. [LUFC] is under no obligation to purchase [the Player]. The [Purchase Obligation] in the Loan Agreement is voided as a result of not being able to effect the transfer by 1 July 2020. The Loan Agreement expires on 30 June and the player will return to RB Leipzig (RBL)”.

31. Also on 22 June 2020, LUFC replied to the Player’s letter dated 16 June 2020, and informed him, *inter alia*, as follows:

“Contrary to what you have stated in your letter, the Club has no obligation to extend your loan beyond 30 June 2020 until the end of the 2019/20 season, nor is it automatically extended for any reason. Any such extension must be agreed by all parties to the loan and, as we have explained to both you and RB Leipzig, the Club does not agree to extending your loan.

Therefore, your loan will come to an end on 30 June 2020 and you will return to RB Leipzig at that point. I can confirm that you will be paid in the normal way until that date. The Club will also pay you your Deferred Wage by no later than 30 July 2020, in accordance with paragraph 4 of the deferral letter, copy attached.

In addition, for the reasons previously explained to you and RB Leipzig, the Club does not accept that it has an obligation to purchase you should the Club be promoted at the end of this season”.

32. Multiple letters were subsequently exchanged between the Parties. However, their diverging positions regarding the interpretation of the Loan Agreement remained unaltered.
33. On 30 June 2020, the EFL Championship was originally scheduled to finish.
34. Also on 30 June 2020, the Player’s registration with the FA for LUFC ended.
35. On 13 July 2020, RB Leipzig inserted a FIFA TMS instruction to complete the permanent transfer of the Player to LUFC. LUFC did not enter the necessary counter-instruction to complete the permanent transfer of the Player ever since.
36. On 22 July 2020, LUFC finished first in the English Championship.
37. On 6 August 2020, LUFC was promoted to the Premier League at the English Premier League Annual General Assembly.
38. On 17 August 2020, counsel for RB Leipzig sent an invoice to LUFC for the amount of EUR 6,740,174.
39. On 20 August 2020, counsel for RB Leipzig sent a letter to the Player, informing him, *inter alia*, as follows:

“As you know, in accordance with Article 10 of the Loan Agreement [...], [the Player] will now be permanently transferred to LUFC. His employment contract with [RB Leipzig] is therefore mutually terminated, in accordance with Article 11 of the Loan Agreement.

[...]

For the avoidance of doubt, we hereby formally confirm that – should LUFC refuse to honor its contractual obligations towards [the Player] – [RB Leipzig] would then, from its perspective, consider [the Player] as a free agent. [RB Leipzig] would support [the Player] whenever needed in the search for a new club and you can contact us whenever needed, should you request our client’s support in this respect”.

40. On 23 August 2020, counsel for LUFC sent a letter to RB Leipzig which, *inter alia*, provides that:

“For the reasons set in our letter dated 30 June 2020 and our client’s letters dated 13 and 22 June 2020, our client has no obligation to purchase the Player from your client. We see little benefit in repeating those points again herein and nothing in your letter changes our client’s position.

Accordingly, our client will not be paying the transfer instalments invoiced by your client, nor will it be completing the TMS transaction”.

41. On 28 August 2020, counsel for RB Leipzig informed the Player of the response received from LUFC on 23 August 2020.
42. On 5 October 2020, the Player was registered as a free agent with the French club FC Nantes. Upon the request of FC Nantes, LUFC confirmed that it considered that the Player was “a RB Leipzig player” and as such, did not seek a transfer fee from FC Nantes. Also RB Leipzig confirmed to the Player that “RB Leipzig will not make any claims based on your past employment contract neither against you nor against FC Nantes”, but that it could not “make any comment on whether you may be currently bound to another football club (other than FC Nantes)”.

B. Proceedings before the Single Judge of the FIFA Players’ Status Committee

43. On 11 November 2020¹, RB Leipzig filed a claim against LUFC before the FIFA Players’ Status Committee (the “FIFA PSC”), requesting that LUFC shall be ordered to pay an amount of EUR 7,000,000, corresponding to the first instalment due as of 30 September 2020, less any applicable deductions for solidarity contribution, but with 5% interest *per annum* as from 1 October 2020.
44. LUFC rejected RB Leipzig’s claim in its entirety.
45. On 1 June 2021, the Single Judge of the FIFA PSC (the “FIFA PSC Single Judge”) rendered his decision (the “Appealed Decision”), with the following operative part:

“1. The claim of [RB Leipzig], is partially accepted.

2. [LUFC] has to pay to [RB Leipzig] the following amount:

➤ EUR 6,740,174 as transfer fee plus 5% interest p.a. as from 1 October 2020 until the date of effective payment.

3. Any further claims of [RB Leipzig] are rejected.

4. [RB Leipzig] is directed to immediately and directly inform [LUFC] of the relevant bank account to which [LUFC] must pay the due amount.

¹ While the Appealed Decision refers to 13 November 2020, RB Leipzig’s claim is dated 11 November 2020.

5. [LUFC] shall provide evidence of payment of the due amount in accordance with this decision to psdfifa@fifa.org, duly translated, if applicable, into one of the official FIFA languages (English, French, German, Spanish).
 6. In the event that the amount due, plus interest as established above is not paid by [LUFC] **within 45 days**, as from the notification [RB Leipzig] of the relevant bank details to [LUFC], the following consequences shall arise:
 1. [LUFC] shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods. The aforementioned ban mentioned will be lifted immediately and prior to its complete serving, once the due amount is paid. (cf. art. 24bis of the Regulations on the Status and Transfer of Players).
 2. In the event that the payable amount as per in this decision is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee.
 7. This decision is rendered without costs”.
46. On 23 July 2021, the grounds of the Appealed Decision were communicated to the Parties, determining, *inter alia*, as follows:

i. Main legal discussion and considerations

- “[...] [T]he Single Judge moved to the substance of the matter, and took note of the fact that the parties strongly dispute the interpretation of the Purchase Obligation stipulated under art. 10 of the [Loan Agreement].
- In this context, the Single Judge acknowledged that his task was to establish whether the conditions set by the parties in order to activate the said clause have effectively occurred and whether [RB Leipzig] shall be entitled to receive the corresponding transfer fee, which first instalment would amount to EUR 7,000,000 less the applicable deductions for solidarity contribution. In order to establish the foregoing, the Single Judge stressed that he must take into account all the specific circumstances of the present matter as well as the structure of the [Loan Agreement] signed between the parties. Ultimately, the Single Judge has to establish what the true intention of the parties was when they agreed upon art. 7, 9 and 10 of the [Loan Agreement].
- In this respect, the Single Judge first noted that both parties acknowledged the validity of the [Loan Agreement]. In other words, the Parties did not dispute that the Player would first be loaned from [RB Leipzig] to [LUFC] and that, in principle, the loan could have been converted to a permanent transfer in case [LUFC] would promote to the Premier League.
- Nevertheless, the Single Judge observed that while [RB Leipzig] requested to be paid for the permanent transfer of the Player and invoked the applicability of the ‘Purchase Obligation’ foreseen under clause 10 of the [Loan Agreement] citing [LUFC’s] promotion to the Premier League,

[LUFC] is primarily of the opinion that since the promotion to the Premier League was only achieved after 30 June 2020, the option was no longer valid and it was under no obligation to engage the player's services on a permanent basis.

- In consideration of the above, the Single Judge decided to turn his attention to the wording of the [Loan Agreement], in particular with reference to art. 10, so as to assess what the intention of the parties was.
- In this respect, the Single Judge is of the opinion that the content of art. 10 of the [Loan Agreement] is in fact very clear; the second paragraph of art. 10 clearly specifies only one condition precedent for the permanent transfer of the player to [LUFC] and that is [LUFC's] promotion to the Premier League at the end of the 2019/2020 season. There is no dispute that [LUFC] indeed promoted to the Premier League at the end of the 2019/2020 season and art. 10 even further specifies that in case of the promotion no 'additional declaration' is necessary.
- The Single Judge is conscious of the fact that art. 10 of the [Loan Agreement] also stipulates that should [LUFC] achieve promotion, that the player shall be permanently transferred with effect as of 1 July 2020. However, the reference to 1 July 2020 is, according to the Single Judge, only included in the [Loan Agreement] as a formality as to specify from which date the player's registration would normally have shifted on a permanent basis to [LUFC]. The Single Judge stresses that 1 July is traditionally the starting date of the new season in England and thus the date on which the registration period opens. The mere fact that the season ended on a later date than originally anticipated due to the postponement of the English Championship in light of the (unforeseeable) COVID-19 pandemic, does not lead the Single Judge to conclude that the 'Purchase Obligation' was no longer triggered when [LUFC] achieved promotion only after 30 June 2020. The Single Judge finds it evident that the interpretation as suggested by [LUFC] is not in line with the intention of the parties when agreeing upon art. 10 of the [Loan Agreement], with such clear language that a permanent transfer would occur by the mere condition of [LUFC] achieving promotion to the Premier League.
- To reiterate, the Single Judge held that it is reasonable and logical to conclude that the original intention of the parties was to transfer the Player on loan until the end of the sporting season 2019/2020 (originally fixed on 30 June 2020) and that such transfer would have acquired a permanent status simply in case of promotion of [LUFC] to the English Premier League, regardless of the effective date of achievement.
- In this sense, the Single Judge is of the opinion that the constant reference by the various agreements to the dates of 30 June and 1 July 2020 shall be interpreted as a simple formality related to the dates of the anticipated conclusion of the season 2019/2020 and the beginning of the season 2020/2021, as originally scheduled by the pertinent organizing institutions. The Single Judge is comforted in his conclusion by analysing [LUFC's] offer to [RB Leipzig] which was made in the middle of the 2019/2020 season and which only referred to the obligation to 'buy' the player at the end of the season, without any specific dates being mentioned.
- Subsequently, the Single Judge addressed the question concerning the effect of the COVID-19 pandemic on the validity of the [Loan Agreement], in particular with reference to the COVID-19 Guidelines as referred to by [LUFC].

- *In this context, the Single Judge wished to refer to the fact that, in light of the worldwide COVID-19 outbreak, FIFA indeed issued a set of guidelines, the COVID-19 Guidelines, which aim at providing appropriate guidance and recommendations to member associations and their stakeholders, to both mitigate the consequences of disruptions caused by COVID-19 and ensure that any response is harmonised in the common interest. Moreover, on 11 June 2020, FIFA has issued an additional document, referred to as FIFA COVID-19 FAQ, which provides clarification about the most relevant questions in connection with the regulatory consequences of the COVID-19 outbreak and identifies solutions for new regulatory matters.*
- *First, the Single Judge noted that based on the COVID-19 Guidelines, as well as the FIFA COVID-19 FAQ, the COVID-19 outbreak is not a force majeure situation in any specific country or territory.*
- *Moreover, the Single Judge recalled that [LUFC] in particular referred to the following wording of those Guidelines: "... If the relevant agreements are not extended, then the loan of the player registration will terminate as originally anticipated in the loan agreement ..." and "... clubs and employees may decide not to negotiate extensions for (expiring) existing agreements ...".*
- *In view of the above, the Single Judge held that the mentioned parts of the COVID-19 Guidelines do not specify that any given clause in a valid loan agreement would automatically become null and void after its original expiry. It is the Single Judge's opinion that even if the Player would have left [LUFC] after 30 June 2020, the "Purchase Obligation" would still have been triggered by the mere fact that [LUFC] achieved promotion, as per the clear intention of the parties when entering into the [Loan Agreement]. The COVID-19 Guidelines do therefore not invalidate the option clause, and the pandemic cannot release [LUFC] from its payment obligations since no specific recommendations or guidelines were introduced by means of which clubs could delay or reduce payments due in accordance with transfer agreements.*

ii. Consequences

- *Having stated the above, the Single Judge noted that pursuant to the [Loan Agreement], in case of activation of the Purchase Obligation stipulated under art. 10, the amount of EUR 7,000,000 (namely the first instalment of the transfer fee) should have been paid by no later than 30 September 2020.*
- *Notwithstanding the above, the Single Judge recalled that according to the same [Loan Agreement], namely art. 9, [LUFC] shall be responsible for the payment of the Solidarity Contribution to the entitled clubs, and shall therefore be allowed to deduct the Solidarity Contribution from any transfer fee and pay only the remaining amounts of the transfer fee to [RB Leipzig].*
- *In this respect, the Single Judge carefully analysed the evidence produced by [RB Leipzig] and acknowledged that the amount of EUR 259,826 shall be deducted from the claimed amount, as also specified in [RB Leipzig's] invoice sent on 14 August 2020, where [RB Leipzig] had already deducted the solidarity contribution.*

- *Therefore, the Single Judge acknowledged that [LUFC] is in default of EUR 6,740,174 as of 1 October 2020.*
- *Accordingly, and in line with the PSC jurisprudence, interest at a rate of 5% per annum shall be applicable to the sum in default.*
- *To conclude, the Single Judge established that [RB Leipzig] shall be entitled to receive the total amount of EUR 6,740,174 plus 5% interest p.a. as of 1 October 2020”.*

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

47. On 13 August 2021, LUFC filed a Statement of Appeal with the Court of Arbitration for Sport (“CAS”) against the Appealed Decision, in accordance with Articles R47, R48 and R51 of the 2021 edition of the CAS Code of Sports-related Arbitration (the “CAS Code”). LUFC designated its Statement of Appeal as its Appeal Brief. LUFC further nominated Mr Mark Hovell, Solicitor in Manchester, United Kingdom, as arbitrator.
48. On 27 August 2021, RB Leipzig nominated Mr Ulrich Haas, Professor and Attorney-at-Law in Hamburg, Germany, as arbitrator.
49. On 31 August 2021, FIFA renounced its right to request its possible intervention in the present arbitration proceedings.
50. On 4 October 2021, RB Leipzig filed its Answer in accordance with Article R55 of the CAS Code.
51. On 5 October 2021, the CAS Court Office informed the Parties that pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Panel appointed to decide the present case was constituted as follows:

President: Mr Manfred Nan, Attorney-at-Law, Arnhem, the Netherlands;
Arbitrators: Mr Mark Andrew Hovell, Solicitor, Manchester, United Kingdom;
Mr Ulrich Haas, Professor and Attorney-at-Law, Hamburg, Germany.
52. On 11 October 2021, following an invitation from the CAS Court Office to express their preferences, LUFC indicated that its preference was for a hearing to be held, while RB Leipzig indicated that it did not consider a hearing to be necessary.
53. On 11 October 2021, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing.
54. On 13 October 2021, the CAS Court Office informed the Parties that Mr Dennis Koolaard, Attorney-at-Law, in Arnhem, The Netherlands, had been appointed as *Ad hoc* Clerk.
55. On 26 January and 1 February 2022 respectively, LUFC and RB Leipzig returned duly signed copies of the Order of Procedure to the CAS Court Office.

56. On 11 February 2022, RB Leipzig submitted a judgment issued by the District Court of Bremen, Germany, dated 31 January 2022 (the “Bremen Judgment”), into evidence, which it alleged supported its position.
57. On 24 February 2022, LUFC objected to the admissibility of the Bremen Judgment, maintaining that RB Leipzig had not advanced any exceptional circumstances and that it was not relevant for the present proceedings. LUFC further requested that, if the Panel would admit the Bremen Judgment on file, RB Leipzig should be ordered to provide a certified translation at the latter’s sole expense, and to confirm whether the Bremen Judgment was appealed.
58. On 25 February 2022, the CAS Court Office informed the Parties that the Panel had decided to admit the Bremen Judgment on file, provided that a certified translation would be filed by RB Leipzig, at its own expense, and to confirm whether the Bremen Judgment was appealed. It was indicated that this decision of the Panel was without prejudice to the relevance of the Bremen Judgment and that both Parties would be allowed to comment during the hearing.
59. On 4 March 2022, RB Leipzig provided the CAS Court Office with a certified translation of the Bremen Judgment.
60. On 10 March 2022, the CAS Court Office informed the Parties that the President of the Panel would not be able to attend the hearing in person, due to medical reasons, but that he could attend the hearing by video-conference. The Parties were invited to indicate their preference for conducting the hearing without the physical presence of the President of the Panel or to postpone the hearing.
61. On 11 March 2022, LUFC informed the CAS Court Office of its preference for a postponement of the hearing and confirmed its availability for a hearing in the week commencing 4 July 2022, whereas RB Leipzig indicated that it was not opposed to either of the alternatives mentioned by the CAS Court Office. RB Leipzig also indicated that it could “confirm that an Appeal was apparently filed” against the Bremen Judgment.
62. On the same date, 11 March 2022, the CAS Court Office informed the Parties as follows:

“After having considered the opposing positions of the Parties, whereas the Appellant suggests a postponement of the hearing in July, however without formally objecting to a possible hybrid solution, and the Respondent’s prefers [sic] to maintain the scheduled date, the Panel decides to confirm that the hearing scheduled on Tuesday 15 March 2022 is maintained.

The hearing shall take place as planned in person in Lausanne. The President of the Panel, if his situation so permit, will be in Lausanne too. In the negative, he will attend and chair the hearing by video link”.
63. On 14 March 2022, LUFC provided the CAS Court Office with a copy of FIFA 2007 commentary on the FIFA RSTP (the “2007 Commentary”) and requested it to be added to the case file.

64. On 15 March 2022, a hybrid hearing was held at the CAS Court Office in Lausanne, Switzerland. At the outset of the hearing, both Parties confirmed that they had no objection as to the constitution and composition of the Panel. Except for the President of the Panel and one of the counsel representing RB Leipzig, all participants attended the hearing in person.
65. In addition to the members of the Panel, Mr Fabien Cagneux, CAS Managing Counsel, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:
- a) For the Appellant:
 - 1) Mr Angus Kinnear, Chief Executive of LUFC;
 - 2) Ms Hannah Cox, Club Secretary of LUFC;
 - 3) Mr Paul Harris QC, Counsel;
 - 4) Ms Fiona Banks, Counsel;
 - 5) Mr James Hill, Counsel;
 - 6) Mr Oliver Hunt, Counsel.
 - b) For the Respondent:
 - 1) Ms Baerbel Milsch, Director Legal RB Leipzig;
 - 2) Ms Judith Eckl, Head of Legal Soccer International of RB Leipzig;
 - 3) Dr Jan Kleiner, Counsel;
 - 4) Dr Joachim Rain, Counsel (by video-conference);
 - 5) Mr Lukas Stocker, Counsel.
66. The following persons were heard, in order of appearance:
- 1) Ms Hannah Cox, Club Secretary of LUFC, witness called by LUFC;
 - 2) Mr Angus Kinnear, Chief Executive of LUFC, witness called by LUFC.
67. At the outset of the hearing, RB Leipzig confirmed that it had no objection to the admissibility of the 2007 Commentary, following which the Panel confirmed that such document was added to the case file.
68. Both witnesses were invited by the President of the Panel to tell the truth subject to the sanctions of perjury under Swiss law. Both Parties and the Panel had full opportunity to examine and cross-examine the witnesses.

69. Both Parties were given full opportunity to present their cases, submit their arguments and answer the questions posed by the members of the Panel.
70. Before the hearing was concluded, both Parties expressly stated that they had no objection to the procedure adopted by the Panel and that their right to be heard had been respected.
71. The Panel confirms that it carefully heard and took into account in its decision all of the submissions, evidence and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

V. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

A. The Appellant

72. LUFC's submissions, in essence, may be summarised as follows:
 - Consistent with the requirement in Article 18(2) of the FIFA RSTP that any loan be for a predetermined period of time, the Parties agreed that RB Leipzig would loan the Player to LUFC for a finite period from 26 January 2020 until 30 June 2020 and transfer the registration of the Player for that period. Furthermore, the Parties agreed that unless the Purchase Option was exercised or the Purchase Obligation triggered, the employment agreement between RB Leipzig and the Player would be reinstated with effect from 1 July 2020. Thus, the Parties clearly intended that the Purchase Obligation would need to be triggered prior to 1 July 2020.
 - The intention of the Parties is supported by i) clause 5(c) of the Loan Agreement, which obliged the Player to enter into an employment contract before 1 July 2020 if the Purchase Obligation would be triggered; ii) clause 10 of the Loan Agreement, which provides that the Player was "[...] *to be permanently transferred to [LUFC] with effect as of July 1, 2020* [...]"; iii) clause 12 of the Loan Agreement, which indicates that the Player was to be permanently transferred to LUFC and receive international clearance before 1 July 2020; iv) the employment contract between RB Leipzig and the Player, indicating that it would be terminated early, as of 30 June 2020, in the event that the purchase option was exercised or the Purchase Obligation triggered; v) the employment contract between LUFC and the Player expired on 30 June 2020; vi) the Deed required LUFC to enter into an employment contract with the Player if the conditions precedent were satisfied on or before 30 June 2020; and vii) the Representation Agreement records that LUFC had agreed to purchase the Player on 1 July 2020 should LUFC achieve promotion at the end of the 2019/20 season. The aforementioned elements were ignored in the Appealed Decision.
 - It is readily apparent that it is RB Leipzig that is acting in breach of the principle of *pacta sunt servanda*, by failing to respect the terms, and in particular the timings, that the Parties agreed.

- In the Appealed Decision, and in line with the reasoning of RB Leipzig in front of the FIFA PSC, the Single Judge erred in referring to the dates, terms and the timings that the Parties agreed as a “*simple formality*”. That argument fails on the clear wording of the Loan Agreement: on no view can a “*condition precedent*” be a “*simple formality*”; to the contrary, the “*conditions precedent*” regarding timing were at the heart of the agreement; moreover, the Parties chose *not* to stipulate that the Purchase Obligation had to take effect from the start of the new season (whenever that may be) but instead, clearly and unequivocally, specified a precise date. The FIFA PSC also ignored that the FIFA RSTP provide that a loan must be for a predetermined period of time. Also, the construction advanced by RB Leipzig that was accepted by the FIFA PSC is undermined by RB Leipzig’s previous acceptance of LUFC’s position that, in order for the Purchase Obligation to be triggered after 30 June 2020, after the Loan Agreement had expired, the Loan Agreement would need to be extended.
- As the season was not completed prior to 1 July 2020, LUFC did not achieve promotion to the Premier League prior to that date, with the result that i) the employment contract between RB Leipzig and the Player was automatically reinstated on 1 July 2020; ii) the condition precedent in the Deed could not be fulfilled; and iii) no transfer fee was payable by LUFC to RB Leipzig. This outcome is in line with the June FIFA Circular, which recognised that if relevant agreements are not extended, then the loan of the player registration will terminate as originally anticipated in the loan agreement.
- While RB Leipzig *could* have sought to negotiate a written variation, it chose not to do so even though LUFC expressly invited RB Leipzig for such a negotiation.

Contra proferentem

- Alternatively, if, contrary to LUFC’s primary case, there is more than one possible interpretation of the Loan Agreement, the principle of *contra proferentem* is engaged. That principle provides that any provision with an unclear wording has to be interpreted against the author of the wording and is well recognised in CAS jurisprudence.

Complementary contractual interpretation

- There is no scope for the application of the principle of complementary contractual interpretation (*ergänzende Vertragsauslegung*), because the meaning of the Loan Agreement is clear and reflects what was intended by the Parties. In any event, to the extent that RB Leipzig, in response to this appeal, seeks to rely upon the principle of “*complementary contractual interpretation*”, it bears the burden of demonstrating that the principle must apply and that the gap shall be filled in favour of its position.
- First, German law sets a very high standard for applying this principle in the first place by demanding that “[...] *the complementary contractual interpretation of the contract must result*

as a compelling, self-evident consequence from the entire context of what was agreed, so that without the supplement made the result would be in obvious contradiction with what was actually agreed according to the content of the contract [...]”, which is not met given the express reference to specific dates in the relevant suite of agreement.

- Second, there is no scope for the application of the principle if various options for filling any gap in the contract can be considered and there are no indications as to which provision the Parties would have made. In the circumstances, there were obviously various options open to the Parties in response to the extension of the season in the United Kingdom due to the COVID-19 *force majeure* event.
- Third, applying this principle must not lead to an impermissible expansion of the subject matter of the contract, in order to ensure the preservation of private autonomy and to prevent the judicial imposition of an unintended regulation. In this instance, there was a suite of four inter-related agreements (the Loan Agreement, the employment contract between the Player and LUFC, the Deed and the employment agreement between the Player and RB Leipzig) and the Loan Agreement itself involved three different parties, including the Player himself. In order for the application of the principle of complementary contractual interpretation to close any alleged *lacuna*, each of those contracts would need to be amended and yet, the employment contract between the Player and LUFC, which had a finite end date of 30 June 2020 and the Deed are governed by English law and no principle of complementary contractual interpretation even exists as a matter of English law.
- Even if the principle of “*complementary contractual interpretation*” were engaged, the Parties would not have agreed upon an extension of the Purchase Obligation until the new end date of the season in case they would have foreseen the COVID-19 pandemic at the time of contracting. This is also supported by the fact that an agreement could not be reached between the Parties.

Force majeure

- Alternatively, because the condition precedent in clause 10 of the Loan Agreement could not be fulfilled prior to 1 July 2020, as a result of the COVID-19 pandemic, the purchase, which had at its heart the permanent transfer of the Player on 1 July 2020, became impossible to perform. Accordingly, the principle of *force majeure* is engaged and the Purchase Obligation is extinguished.
- The principle of *force majeure* is defined in CAS jurisprudence as an event which: (i) is beyond the parties’ control; (ii) they could not have reasonably provided against before entering into the contract; and (iii) could not reasonably have been avoided or overcome, and which is not attributable to any of the parties.
- FIFA itself has declared that COVID-19 amounts to a *force majeure* event for FIFA and football generally. LUFC was unable to fulfil its contractual obligation under clause 10 of the Loan Agreement because of the global pandemic that meant the season could

not be completed by 30 June 2020. Self-evidently, that impediment was not attributable to any of the Parties, was entirely outside both Parties' control and could not reasonably have been avoided or overcome. The events were unforeseeable at the date of entering into the Loan Agreement and could not have reasonably provided against before entering into the contract.

Rebus sic stantibus

- The same result follows as a matter of Swiss law. Pursuant to Article 119 of the Swiss Code of Obligations (the "SCO"), an obligation is deemed extinguished where its performance is made impossible by circumstances not attributable to the obliger; and/or the doctrine of *rebus sic stantibus*, which provides that a party with a right to be discharged from an obligation under a contract when extraordinary and unforeseeable events have occurred which mean that performance of those obligations cannot be expected by virtue in good faith.

Venire contra factum proprium

- Alternatively, to the extent that there is any scope for the subsidiary application of German law and RB Leipzig maintains a claim to be entitled to payment of the transfer fee as a matter of German law, that claim fails for the following additional reasons: i) to the extent that the principle of "[...] *interference with the basis of the transaction* [...]" is engaged pursuant to Section 313 para. 1 of the German Civil Code (the "GCC"), including because none of the Parties contractually assumed the risk of an extended season beyond 30 June 2020, there is no possibility for a modification of the Loan Agreement by extending it beyond the contractual term because RB Leipzig failed to respond in a timely manner to LUFC's April offer with the result that LUFC is entitled to revoke the Loan Agreement. RB Leipzig is also prevented from relying on the Purchase Obligation due to the doctrine of *venire contra factum proprium* pursuant to Section 242 of the GCC. By failing to respond to LUFC's April offer for almost two months, the Player and RB Leipzig created the impression that they were not willing to extend the Loan Agreement. Finally, RB Leipzig is not entitled to claim any transfer fee pursuant to Section 326 para. 1 of the GCC, in circumstances in which it is now impossible (within the meaning of Section 275 of the GCC) to transfer the Player's registration to LUFC following RB Leipzig's transfer of the Player to FC Nantes.

73. On this basis, LUFC submits the following prayers for relief in its Appeal Brief:

- "a) grant LUFC's Appeal, set aside the Decision and declare that RBL has no entitlement to any transfer fee in connection with the Player, pursuant to the terms of the Loan Agreement;
- b) order all LUFC's costs of this Appeal and the proceedings at first instance before the FIFA Players' Status Committee to be payable by RBL; and

- c) *order that RBL bear the arbitration costs with any advance of costs already paid by LUFC to be reimbursed to it in accordance with CAS Procedural Rule 64.4*”.

B. The Respondent

74. RB Leipzig’s submissions, in essence, may be summarised as follows:

- From one day to another, LUFC lost its interest in the Player, maybe because of his sporting performance, maybe because of an injury, maybe for other reasons – this is, however, irrelevant and no excuse.
- LUFC then first tried to “negotiate downwards” the transfer fee, of which it knew very well that it remained payable towards RB Leipzig. LUFC clearly expressed such a wish in its email of 24 April 2020 towards the Player’s Agent, where it stated that it *“would also like to ask for [RB Leipzig’s] consideration in changing the instalments due to the financial impact caused by the Covid-19 pandemic”*. Only once it was clear that this would not be successful, LUFC started to look for pretexts. LUFC misconstrued good faith correspondence of RB Leipzig, it misconstrued the underlying intentions of the Parties, it misconstrued the wording and meaning of the Loan Agreement and it started to hide behind a wholly contrived argumentation.
- The obligation to transfer the Player permanently to LUFC for an agreed transfer fee of EUR 21,000,000.00 was conditioned only on LUFC’s promotion to the Premier League at the end of the season 2019/20. This condition is clearly and evidently fulfilled.
- A brief look at the wording of the Loan Agreement shows that LUFC’s proposition that the dates of 30 June and 1 July form part of the condition precedent is simply untrue. The Loan Agreement clearly tells us that the only relevant condition precedent is the promotion of LUFC to the Premier League at the end of the 2019/20 season. Once this condition precedent is triggered, then the consequence is also defined: The Player would then be permanently transferred to LUFC *“with effect as of July 1, 2020”*. This, however, means nothing else than that the Player would transfer *“with effect as from the new season”*. This, and only this, is the reason why 1 July 2020 is mentioned, as the standard starting date of a new season.
- The FIFA PSC Single Judge fully shared RB Leipzig’s position, and he flatly rejected the position of LUFC.
- Besides being at odds with the wording of clause 10 of the Loan Agreement, a comparison with other sections of the Loan Agreement further underlines how LUFC’s proposition is misleading. Indeed, for other conditions precedent, the Loan Agreement expressly provided that a failure to meet certain dates would indeed cancel certain obligations. Contrary to this, clause 10 of the Loan Agreement does not establish such a mechanism.

- It is the primary submission of RB Leipzig that there is no need for interpretation at all. As confirmed in the Appealed Decision, the Loan Agreement is clear and unequivocal. There is no necessity, and thus no room, for any interpretation: *in claris non fit interpretatio*.
- If – for the sake of the argument – one would interpret the Loan Agreement, two approaches would in theory be possible. First, one has to establish the underlying intentions of the Parties. The references to 30 June and 1 July are nothing else than a reference to the usual start and end date of a season. Second, if ever necessary, one could raise the question what the Parties would have agreed, had they known that the start and end date of the respective seasons would, as an exception, be slightly postponed. There cannot be any serious doubt that in such a case, the Parties would simply have adjusted these dates to the amended start and end date of a season.
- When determining the real, underlying reasons of the Parties under Article 18 of the SCO or Section 133 of the GCC, it appears from the very first offer of LUFC, from the Loan Agreement, from the employment contract between LUFC and the Player and from the instructions in FIFA TMS of both Parties, that it was the intention of the Parties that LUFC would be obliged to permanently acquire the Player’s services for a predetermined transfer fee.
- The reference in the Loan Agreement to 1 July 2020 does not have any influence on the agreed triggering condition, because i) both Parties are experienced in international transfers; ii) it was common knowledge that the regular 2019/20 football season would end on 30 June and the following football season would begin, retrospectively, on the following date, i.e. 1 July. What the Parties meant by “1 July 2020” was nothing else than “the start of the new season”.
- It is of course true that when the Loan Agreement was concluded, none of the Parties anticipated that the COVID-19 pandemic could lead to a – slight – change in season dates. In other words, the Parties did not fully regulate the present legal issue in their contract, i.e. the problem that season dates may be exceptionally altered.
- However, this gap (“*lacuna*”) is totally irrelevant for the present matter: This case is not about the question whether LUFC had the right to continue to “use” the services of the Player after end of June. This dispute is exclusively about the automatic Purchase Obligation in clause 10 of the Loan Agreement which was triggered “with the promotion of LUFC at the end of the season 2019/2020”.

Complementary contractual interpretation

- If – for the sake of argument only – one considers that there is a slight “gap” in the Loan Agreement, the principle of how such a hypothetical gap (*lacuna*) in a contract would have to be filled is widely recognised. In German and Swiss law, one refers to the principle of complementary contractual interpretation (*ergänzende Vertragsauslegung*). This principle applies whenever the Parties unintentionally did not consider an issue

that later materialized. In that case, it must be examined what the Parties reasonably and in good faith would have agreed, if they actually had considered the issue they unintentionally omitted to regulate.

- Applying this principle, there can be no doubt that the Parties – if they had been aware of the unforeseeable and unique case of an extension of the season beyond 30 June – had agreed to also postpone the relevant dates until the actual end of the season 2019/20 and, respectively, the beginning of the season 2020/21. This is also in line with the circulars issued by FIFA.

Contra proferentem

- LUFC relies heavily on the so-called principle of *contra proferentem*. However, there is no ambiguity and there is thus no room to invoke the *contra proferentem* principle. Furthermore, case law of the Swiss Federal Tribunal (the “SFT”) makes clear that the *contra proferentem* principle applies only if all other methods of interpretation fail. In other words, it is only a subsidiary method of interpretation. Moreover, the entire wording of clause 10, i.e. that the condition precedent is linked only to the “*promotion of [LUFC] at the end of the 2019/2020 season*” has been adapted from the very first offer drafted and submitted by LUFC. Thus, if the *contra proferentem* principle applies to any party, then this party is LUFC. In any event, the Loan Agreement was discussed and negotiated between both Parties. Case law of the SFT makes clear that in such a scenario, the *contra proferentem* principle does not apply.

LUFC’s witnesses

- Both witness statements produced by LUFC in support of their position are schoolbook examples of hindsight bias. The witness statement of Mr Kinnear only confirms the true motivation behind the behaviour of LUFC. LUFC’s refusal to honour its financial obligations is not because of the dates of 30 June and 1 July, and not because LUFC would genuinely think that the Purchase Obligation was not triggered, but it shows that LUFC is simply refusing to honour a contract of which it today thinks that it is a too burdensome financial commitment. This is no valid legal reason at all. This position is, in addition, entirely at odds with the behaviour of LUFC during the relevant transfer period. Public sources reveal that LUFC was able to spend amounts beyond EUR 100,000,000 in the summer transfer period of 2020.

Force majeure

- In a last desperate attempt, LUFC relies heavily on the COVID-19 pandemic, suggesting that this pandemic *per se* created a situation of *force majeure*, which would somehow free LUFC from its binding obligations. However, FIFA indicated in the Appealed Decision that “*the COVID-19 outbreak is not a force majeure situation in any specific country or territory*” and that “*the mentioned parts of the COVID-19 Guidelines do not specify*

that any given clause in a valid loan agreement would automatically become null and void after its original expiry”.

- It appears that LUFC, without specific arguments, criticizes the interest rate of 5% *p.a.* which was applied on the overdue amount of EUR 6,740,174, as from 1 October 2020. However, LUFC seems to ignore that this is the standard rate in long-standing case law of FIFA and it is also the standard interest rate under substantive Swiss law. As such, the criticism of LUFC is once again devoid of merit.

75. On this basis, RB Leipzig submits the following prayers for relief in its Answer:

- “1. The Appeal submitted by Leeds United Football Club Limited shall be rejected, insofar as it is admissible, and the Appealed Decision shall be confirmed.*
- 2. All costs of these proceedings shall be charged to Leeds United Football Club Limited.*
- 3. Leeds United Football Club Limited shall be ordered to pay a contribution to the legal fees of RasenBallsport Leipzig GmbH at the amount of CHF 50,000.-*

As a matter of good order only, RasenBallsport Leipzig GmbH expressly reserves the right to file a separate and/ or new claim against Leeds United Football Club Limited, whenever new instalments under the Loan Agreement fall due”.

VI. JURISDICTION

76. The jurisdiction of CAS, which is not disputed, derives from Article 58(1) of the FIFA Statutes (2020 Edition), as it determines that “[a]ppeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question”, and Article R47 of the CAS Code. The jurisdiction of CAS is not contested and is further confirmed by the Order of Procedure duly signed by the Parties.

77. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VII. ADMISSIBILITY

78. The appeal was filed within the deadline of 21 days set by Article 58(1) of the FIFA Statutes. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

79. It follows that the appeal is admissible.

VIII. APPLICABLE LAW

80. Article R58 of the CAS Code provides as follows:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

81. Article 57(2) of the FIFA Statutes provides as follows:

“The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.

82. Article 18 of the Loan Agreement provides as follows:

“This Agreement shall be primarily governed by the rules and regulations of FIFA. In the absence of relevant rules and regulations of FIFA, German law shall apply”.

83. LUFC submits that the case is primarily governed by the FIFA RSTP which should be construed in light of Swiss law, pursuant to Article 57(2) of the FIFA Statutes and the jurisprudence of the CAS. Therefore, LUFC concludes that German law is only applicable when a certain matter is not governed by FIFA’s rules and regulations.

84. RB Leipzig argues that the case shall be governed primarily by the FIFA RSTP, and that the Loan Agreement is governed, on a subsidiary basis, by German law. However, insofar German law is applicable to the dispute, RB Leipzig submits that the principles of German law are identical with Swiss law.

85. The Panel finds that the dispute is primarily governed by the various regulations of FIFA, in particular the FIFA RSTP. Pursuant to Article 57(2) of the FIFA Statutes, Swiss law is applicable additionally as an interpretative tool of the FIFA rules and regulations. Insofar RB Leipzig relies on German law, its submission that German law does not materially differ from Swiss law (except concerning the applicable default interest rate, which is addressed separately below) remained undisputed by LUFC as a consequence of which the Panel is not required to pronounce itself on this issue.

IX. MERITS

A. The Main Issues

86. The main issues to be resolved by the Panel are the following:

- i. Is the Purchase Obligation triggered?

ii. What are the consequences thereof?

i. Is the Purchase Obligation triggered?

87. The Panel finds that the dispute between the Parties boils down to the question at what moment did the Purchase Obligation have to be complied with in order to oblige LUFC to acquire the services of the Player from RB Leipzig for a transfer fee of EUR 21,000,000?

88. If the decisive moment was 1 July 2020, as argued by LUFC, the Purchase Obligation would not have been satisfied.

89. However, if the decisive moment was the end of the 2019/20 season, as argued by RB Leipzig, the Purchase Obligation would have been satisfied.

90. To answer this question, clause 10 of the Loan Agreement requires interpretation.

91. In the absence of any guidance in the FIFA RSTP, the Panel resorts to Swiss law for the principles applicable to interpretation of contracts. In this respect, Article 18 of the SCO seeks first and foremost to establish the intent of the Parties and – in case the latter cannot be determined – falls back on an objective interpretation of the contract:

“When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement”.

92. This is not materially different from Section 133 of the GCC:

“When a declaration of intent is interpreted, it is necessary to ascertain the true intention rather than adhering to the literal meaning of the declaration”.

93. The Panel commences its analysis with the wording of the actual condition precedent in clause 10 of the Loan Agreement, which provides as follows:

“The [LUFC] 1st men’s team is promoted to the Premier League at the end of the 2019/2020 season and thus qualifies for participation in the Premier League in the 2020/2021 season”.

94. The Panel observes that this provision does not refer to the date of 1 July 2020.

95. However, other parts of the Loan Agreement and related contracts do refer to 30 June and/or 1 July 2020. The references considered most relevant by the Panel in this respect are paraphrased here below.

96. Clause II.5 of the Loan Agreement provides, *inter alia*, as follows:

“The Player herewith explicitly undertakes and confirms:

[...]

- c. *that he agrees with the terms of the permanent transfer contemplated by this Agreement and in the event that the Purchase Option is exercised or the Purchase Obligation triggered, he shall enter into a full employment contract with [LUFC] at the earliest opportunity permitted by the relevant football regulations (and in any event before 1 July 2020)*”

97. Clause II.7 of the Loan Agreement provides, *inter alia*, as follows:

“Any contractual amendments to the Employment Agreement shall be limited in time for the Loan Period. Unless the Purchase Option in accordance with clause 9 below is exercised or the Purchase Obligation according to Clause 10 is triggered, the Employment Agreement shall be reinstated as of July 1, 2020 for the future in its original version”.

98. Clause II.9 of the Loan Agreement provides, *inter alia*, as follows:

“[LUFC] shall be entitled (notwithstanding the case stipulated in clause 10 when [LUFC] shall be obliged) to permanently transfer the Player to [LUFC] with effects as of July 1, 2020 by unilateral, written declaration, which shall be submitted to [RB Leipzig] by May 30, 2020 at the latest”.

99. Clause II.10 of the Loan Agreement provides, *inter alia*, as follows:

“If the aforementioned condition precedent occurs, the Purchase Option shall be triggered without any additional declaration and the Player shall be permanently transferred to [LUFC] with effect as of July 1, 2020”.

100. Clause II.11 of the Loan Agreement provides, *inter alia*, as follows:

“[RB Leipzig] and the Player declare that the Employment Agreement shall be terminated early with effect as of June 30, 2020 in the event that the abovementioned Purchase Option is exercised or the Purchase Obligation is triggered”.

101. Clause II.12 of the Loan Agreement provides, *inter alia*, as follows:

“[RB Leipzig] and [LUFC] agree that in the event that the Purchase Option is exercised or the Purchase Obligation is triggered, they shall take all necessary steps to transfer the Player’s permanent registration to [LUFC] and ensure that the Player receives international clearance as soon as reasonably practicable and in event before 1 July 2020”.

102. Finally, the Panel considers it relevant that clause IV.3 of the Loan Agreement contains a so-called entire agreement clause, stipulating that *“[t]his Agreement sets out the entire agreement between [LUFC] and [RB Leipzig] and supersedes all prior discussions, statements, representations and undertakings between them or their advisors”*, as a consequence of which the Panel is reluctant to take into account discussions between the Parties before the conclusion of the Loan Agreement in interpreting their subjective intentions.

103. The Panel infers from the above citations that the Parties clearly had in mind that the 2019/20 season would finish before 1 July 2020, but that the condition precedent itself does not refer to such date.

104. Due to the unusual circumstances related to COVID-19, the EFL Championship did not finish by 1 July 2020, but only on 22 July 2020, at least this was the date that LUFC secured its promotion to the Premier League, which was subsequently formalised at the English Premier League Annual General Assembly on 6 August 2020.
105. Neither of the two interpretations advanced by the Parties is perfect and the two interpretations cannot be reconciled. Either the date of 1 July 2020 would have to be read into the condition precedent while it is not there, or the condition precedent does not align with other clauses in the Loan Agreement referring to 30 June or 1 July 2020.
106. At the outset, the Panel considers it relevant that the Purchase Obligation is a provision that mainly protects the interests of LUFC in that it would be relieved of the duty to acquire the services of the Player on a permanent basis if it would not be promoted to the Premier League. At the same time, even if the Purchase Obligation would not be triggered, LUFC could still invoke the Purchase Option and acquire the services of the Player for the 2020/21 season without requiring RB Leipzig's consent and for the same transfer fee of EUR 21,000,000. The combination between the Purchase Option and the Purchase Obligation thereby provided LUFC with a significant degree of certainty and flexibility.
107. If the Purchase Option would be invoked or the Purchase Obligation triggered, RB Leipzig would not be in a position to block the permanent transfer of the Player or (re)negotiate the transfer fee of EUR 21,000,000.
108. By agreeing to the Purchase Obligation, LUFC accepted a serious financial commitment, solely dependent on its promotion to the Premier League. The Purchase Obligation did not leave LUFC any discretion to step away from its commitment based on circumstances other than a potential failure to be promoted to the Premier League. For example, if LUFC felt that the Player would not live up to the expectations or if he sustained a serious injury, this would not allow LUFC to step away from its commitment.
109. An important element in the Panel's analysis is that the condition precedent not only refers to *"the end of the 2019/2020 season"* as the triggering element, but also indicates that LUFC *"thus qualifies for participation in the Premier League in the 2020/2021 season"*.
110. The Panel infers from this that the goal of the Parties when executing the Purchase Obligation was to primarily enable LUFC to field the Player in the 2020/21 Premier League season. This would in principle only be possible if the condition precedent would be valid until the end of the 2019/20 season and not only until 1 July 2020, because under the latter interpretation, despite LUFC's promotion at the end of the 2019/20 season and LUFC's participation in the Premier League in the 2020/21 season, the Purchase Obligation would normally not be triggered (unless perhaps LUFC would secure promotion at a very early stage in the 2019/20 season). The Panel finds that this latter interpretation could not reasonably have been the intention of the Parties when concluding the Purchase Obligation and, furthermore, such interpretation goes against the *raison d'être* of the Purchase Obligation.

111. The Panel has no doubt that, had the Parties known at the time of conclusion of the Loan Agreement that the EFL Championship would not finish by 1 July 2020, but only on 22 July 2020, they would have amended the various terms of the Loan Agreement in such a way as to enable the Player's registration with LUFC at such later date prior to the start of the 2020/21 season.
112. The Panel considers this to be in line with the principle of "complementary contractual interpretation" or "*ergänzende Vertragsauslegung*", which concept is not vested in any statutory provisions in German or Swiss law, but which concept is recognised and applied equally under German and Swiss law. The latter has also been submitted by RB Leipzig and accepted by LUFC.
113. As put by RB Leipzig, this principle applies whenever the parties unintentionally did not consider an issue that later materialized. In that case, it must be examined what the parties reasonably and in good faith would have agreed, if they actually had considered the issue they unintentionally omitted to regulate.
114. While the threshold for the application of "complementary contractual interpretation" is relatively high, the Panel finds that the circumstances in the matter at hand justify such conclusion and meet the threshold invoked by LUFC:
- "[...] the complementary contractual interpretation of the contract must result as a compelling, self-evident consequence from the entire context of what was agreed, so that without the supplement made the result would be in obvious contradiction with what was actually agreed according to the content of the contract [...]"* (BGHZ 40, 91 = NJW 1963, 2071, 2075).
115. The Panel finds that LUFC did not put forward any convincing reasoning as to why the date of 1 July 2020 was of particular importance to it, other than it simply being the date usually dividing two football seasons.
116. Mr Kinnear's explanation that the date of 1 July 2020 "*was specifically intended to tie the purchase obligation to the date on which the Loan Agreement was due to expire, so that it could not be triggered after the player's employment with RB Leipzig was reinstated*" is – in the view of the Panel – not convincing, because the reinstatement of the Player's employment relationship with RB Leipzig as from 1 July 2020 did not prevent the Player from transferring to LUFC on a permanent basis on a later date, i.e. the Purchase Obligation survived the Player's loan to LUFC.
117. In other words, the Parties' primary intention was that the Player would transfer from RB Leipzig to LUFC if the latter would be promoted to the Premier League at the end of the 2019/20 season. When this would exactly happen was only ancillary to the primary intention.
118. This may have been different, if the end of the EFL Championship would have been postponed for a significant period of time (e.g. many months), or the start of the 2020/21 Premier League season would have been delayed significantly. However, a delay of only 22

days is insignificant and does not appear to cause any meaningful prejudice to LUFC. To the contrary, LUFC would save itself about three weeks of salary due to the later entry into force of the employment contract with the Player.

119. The Panel feels itself comforted in this reasoning by the Bremen Judgement invoked by RB Leipzig. In this decision from the Regional Court of Bremen (which is under appeal) dated 31 January 2021, an intermediary claimed a commission of EUR 250,000 from a club, premised on the relevant player still being under contract with the club on 31 August 2020, which would usually be the end-date of the summer transfer window. However, the summer transfer window had been postponed and ended on 5 October 2020. The Bremen Judgment considered, *inter alia*, as follows:

“However, it can very well be derived from all this that the parties, if not from their true intention within the meaning of section 133 BGB, then at least based on their hypothetical intention under the terms of section 157 BGB, would also have consented to a later deadline when they entered into the contract if they had factored into their calculations the possibility that the end of the summer transfer window in the 2020/21 season would be pushed back by 5 weeks and that the start of match day operations would also be pushed back to virtually the same extent by 3 weeks” (Bremen Judgment, para. 1.4.2).

120. Section 157 of the GCC provides as follows:

“Contracts are to be interpreted as required by good faith, taking customary practice into consideration”.

121. While the factual background of the present litigation is obviously different, the Panel finds that certain relevant parallels can be drawn with the Bremen Judgment. Following the reasoning of the Bremen Judgment, even if the condition precedent in clause 10 of the Loan Agreement had explicitly referred to 1 July 2020 – which it does not – still one has to consider the reason for referring to such date. In the absence of any convincing reasoning as to why the date of 1 July 2020 was of particular importance to LUFC, other than it merely being the date usually dividing two seasons, the Panel finds that, based on the true intention of the Parties, the concept of “complementary contractual interpretation”, i.e. the hypothetical intention of the Parties, had the Parties factored in the slight three-week delay in finishing the EFL Championship due to the COVID-19 pandemic, they would not have referred to 30 June or 1 July 2020, but to around 22 July 2020.
122. As to LUFC’s argument that, had it known about the COVID-19 pandemic and the impact thereof on its financial situation, it would not have concluded the Loan Agreement at all, the Panel finds that this argument must be dismissed. While COVID-19 undoubtedly had a negative impact on LUFC’s financial situation, the extent thereof is unclear. While Mr Kinnear testified that COVID-19 had a “catastrophic impact on the Club’s finances”, LUFC did not present any evidence demonstrating the extent of LUFC’s financial hardship.
123. RB Leipzig alleges that, notwithstanding the COVID-19 pandemic, LUFC still spent a reported GBP 100,000,000 on acquiring the services of new players during the delayed

summer 2020 transfer window, which allegation remained uncontested by LUFC and which appears to be corroborated by the (admittedly not 100% reliable, but publicly available) information presented on www.transfermarkt.com. The Panel finds that such expenditure, in combination with a significant increase of revenue due to the promotion to the Premier League, cannot be reconciled with the financial catastrophe alleged by LUFC.

124. The Panel also considers the timing relevant, in particular that LUFC proposed to RB Leipzig on 24 April 2020 to extend the term of the Loan Agreement and the Purchase Obligation *“in the event that [the current season] is extended beyond 30th June 2020”*, for the same transfer fee of EUR 21,000,000, but subject to a delayed payment schedule.
125. In this respect, while Mr Kinnear testified that such proposal was made *“only on the basis that we could renegotiate down the transfer fee, in light of the changes in the Club’s financial circumstances”*, the Panel notes that LUFC did not attempt to renegotiate the transfer fee of EUR 21,000,000, but that it only sought to delay the payment terms.
126. While this offer of LUFC was ultimately declined by RB Leipzig, the Panel considers it telling that, when the EFL Championship was already suspended since 13 March 2020 due to the outbreak of COVID-19, more than a month later, in a period of deep uncertainty as to how COVID-19 would impact on the football industry, LUFC was still prepared to extend the Loan Agreement and reconfirmed its commitment to the Purchase Obligation for the same transfer fee, only subject to a delayed payment schedule.
127. In such circumstances, the Panel finds that LUFC’s argument that it would not have extended the deadline of 1 July 2020 to a later date at the moment of conclusion of the Loan Agreement had it foreseen the impact of COVID-19 unconvincing, as it proposed just that at a moment when the outbreak of COVID-19 had already evolved into a pandemic.
128. Another element the Panel considers relevant is the fact that on 12 June 2020, LUFC informed the Player that *“the Club’s coaching and medical staff consider that your current physical condition is such that you will not be fit enough to play for the first team when the 2019/20 season is due to restart”*. The Panel considers that this is an indication that LUFC was not particularly interested in the Player’s services anymore and therefore did not seek to extend the loan of the Player until after 30 June 2020.
129. While LUFC’s disinterest in the Player’s services may have been a valid argument not to extend the loan (in accordance with the FIFA COVID-19 Guidelines) and not to invoke the Purchase Option, it was not a valid argument to shy away from the Purchase Obligation. It would be unfair for RB Leipzig if LUFC were permitted to opt away from the Purchase Obligation by invoking the COVID-19 pandemic as a get out of jail free card, while the real reason would be that LUFC no longer considered the permanent transfer of the Player to be a good bargain.
130. As already indicated *supra*, it is not a problem for the Panel that the Player’s loan stint with LUFC already ended on 30 June 2020, as a consequence of which the Player’s employment

contract with RB Leipzig resumed. The mere fact that the Player's registration may have returned to RB Leipzig or that the Player's employment contract with RB Leipzig resurrected does not mean that the Player could not be definitely transferred to LUFC after 1 July 2020 in accordance with the Purchase Obligation. The Purchase Obligation simply survived the Loan Agreement in the sense that the Purchase Obligation could be triggered after the Player's loan to LUFC had ended.

131. Insofar as LUFC maintains that the Purchase Obligation cannot be interpreted by "complementary contractual interpretation" or "*ergänzende Vertragsauslegung*" because it interlocks with other contracts such as the employment contract between RB Leipzig and the Player, the employment contract between LUFC and the Player, the Deed and the Representation Agreement, such contracts are concluded between different parties than the Parties in the matter at hand and therefore have no direct bearing on the outcome of the present proceedings. The Panel's mandate is limited to resolving the dispute between the Parties in the present appeals arbitration proceedings.
132. The Panel finds that LUFC's reliance on the legal concept of *contra proferentem* is of no particular relevance for the interpretation of the Purchase Obligation and does not warrant drawing any particular inferences against RB Leipzig, not least because when LUFC first expressed its interest in the services of the Player on 23 January 2020, it proposed, *inter alia*, that such arrangement would involve an "[o]bligation to buy the player at the end of the season on the condition that [LUFC] is promoted to the Premier League for €21,000,000", i.e. without making reference to the specific date of 1 July 2020, which wording was simply repeated in the Loan Agreement. Accordingly, while RB Leipzig may have drafted the Loan Agreement, since LUFC was the original author of the Purchase Obligation, if the principle of *contra proferentem* were to be given any relevance, the Panel finds that it would have to be applied against LUFC.
133. The Panel finds that there is no room for the application of the concepts of *force majeure* or *rebus sic stantibus*. Indeed, LUFC did not provide any evidence establishing that the consequences of the COVID-19 pandemic had such a negative impact on its financial situation that it would be impossible or unreasonably burdensome for LUFC to comply with the Purchase Obligation as set forth in the Loan Agreement. As to the impossibility of executing the Player's transfer to LUFC on 1 July 2020, the Panel finds that this is to be resolved by "complementary contractual interpretation" or "*ergänzende Vertragsauslegung*" as set forth *supra*, not by extinguishing the entire Purchase Obligation.
134. Finally, as to the late rejection by RB Leipzig of LUFC's offer to extend the Purchase Obligation and LUFC's argument that RB Leipzig's two-months delay in responding created the impression on LUFC that RB Leipzig was not willing to extend the Purchase Obligation, the Panel finds that also this argument is to be dismissed.
135. On 12 June 2020, RB Leipzig informed LUFC, *inter alia*, that it agreed "*that we should amend the purchase obligation being affected as of one day following the end of [LUFC's] current season*". While such confirmation did not result in an agreement due to LUFC's alleged revocation of its "offer" on 8 June 2020 and because RB Leipzig did in any event not agree to amend the

payment terms as proposed by LUFC, the Panel finds that the only action undertaken by RB Leipzig suggests that it was agreeable to extend the Purchase Obligation, not the contrary. The Panel finds that RB Leipzig's preparedness to extend the term of the Purchase Obligation cannot be stretched to mean that RB Leipzig understood that the Purchase Obligation would have expired on 1 July 2020 without such extension. As maintained by RB Leipzig, if anything, its agreement to LUFC's request only displays its constructive and good faith attitude. This is demonstrated by RB Leipzig's response dated 15 June 2020 that addressed LUFC's letter dated 13 June 2020 by means of which the latter suggested that the Purchase Obligation was not binding anymore, in which response RB Leipzig clearly rejected LUFC's withdrawal from the Purchase Obligation as follows:

"The Purchase Obligation is linked to the condition precedent that [LUFC] is promoted to the Premier League at the end of the 2019/2020 season. It is not determined that this condition must be fulfilled until a certain date. [...] Therefore, it is the mandatory result of an adequate interpretation of the existing agreement under the specific circumstances to conclude that July 1 is simply deferred to July 25, 2020 (as being the first day of the English transfer period to guarantee a seamless process between the loan and the date of purchase)".

136. RB Leipzig's two-month silence may have been caused by a myriad of reasons, not least the fact that LUFC did not approach RB Leipzig directly with its offer, but that it presented its offer to the Player's Agent as a consequence of which it is not clear when LUFC's offer reached RB Leipzig.
137. Consequently, for all the above reasons, the Panel finds that the Purchase Obligation was triggered.

ii. What are the consequences thereof?

138. Considering that the Panel finds that the condition precedent in Clause II.10 of the Loan Agreement is satisfied, the Panel finds that LUFC is obliged to permanently acquire the services of the Player from RB Leipzig for a transfer fee of EUR 21,000,000, *"less any deductions"* and payable in three instalments of EUR 7,000,000 each, due as from 30 September 2020, 30 September 2021 and 30 September 2022, respectively.
139. The present appeal arbitration proceedings only concern the first of three instalments. The FIFA PSC Single Judge awarded RB Leipzig, *inter alia*, as follows in the Appealed Decision:

"EUR 6,740,174 as transfer fee plus 5% interest p.a. as from 1 October 2020 until the date of effective payment".

140. No objections were raised concerning the specific amount awarded in the Appealed Decision, i.e. EUR 6,740,174 (EUR 7,000,000 - EUR 259,826).
141. The Panel has no reason to doubt the calculation of the payable solidarity contribution, and in the absence of any objection raised against the deduction applied by the FIFA PSC Single Judge, confirms the Appealed Decision in this respect.

142. As to the interest awarded in the Appealed Decision, without further substantiation, LUFC argues that *“there is no basis for the penal rate of interest sought to be applied, which rate bears no relationship to current commercial rates in the UK or Germany”*.
143. RB Leipzig relies on Article 104(1) of the SCO to argue that 5% interest *per annum* is the standard rate in long-standing case law of FIFA and that it is also the standard interest rate under substantive Swiss law. RB Leipzig further maintains that the applicable interest rate under German law would be significantly higher, i.e. 8.12%.
144. The Panel finds that, while one could argue that German law is applicable to interest rates given that applicable interest rates are not governed by the FIFA RSTP and because the Parties opted for the Loan Agreement to be governed by German law, LUFC did not establish what the applicable interest would be under UK or German law, thereby depriving the Panel from considering such alternatives. The Panel therefore applies Swiss law with respect to the applicable interest rate. On a sidenote, the Panel notes that Section 352(1) of the German Code of Commerce provides as follows:
- “(1) Die Höhe der gesetzlichen Zinsen, mit Ausnahme der Verzugszinsen, ist bei beiderseitigen Handelsgeschäften fünf vom Hundert für das Jahr. [...]”*
- Free translation: *The amount of statutory interest, with the exception of default interests, shall be five per cent for the year in the case of mutual commercial transactions.*
145. For default interests, Section 288(1) of the GCC provides as follows:
- “Eine Geldschuld ist während des Verzugs zu verzinsen. Der Verzugszinssatz beträgt für das Jahr fünf Prozentpunkte über dem Basiszinssatz”*.
- Free translation: *A monetary debt shall bear interest during the period of default. The interest rate on arrears for the year shall be five percentage points above the base rate.*
146. Article 104(1) of the SCO provides as follows:
- “A debtor in default on payment of a pecuniary debt must pay default interest of 5% per annum even where a lower rate of interest was stipulated by contract”*.
147. Finally, the present dispute involves LUFC and RB Leipzig. The Panel noted that the Player was ultimately registered by FC Nantes on 5 October 2020. The Panel wishes to specifically state that it does not pronounce itself on the legal relationship between either of the Parties and FC Nantes and/or the Player. Any such potential disputes would have to be resolved separately.
148. Consequently, LUFC shall pay to RB Leipzig EUR 6,740,174 as the first instalment of the transfer fee, plus 5% interest *per annum* as from 1 October 2020 until the date of effective payment.

B. Conclusion

149. Based on the foregoing, the Panel holds that:
- i) The Purchase Obligation was triggered;
 - ii) LUFC shall pay to RB Leipzig EUR 6,740,174 as the first instalment of the transfer fee, plus 5% interest *per annum* as from 1 October 2020 until the date of effective payment;
 - iii) LUFC's appeal is dismissed and the Appealed Decision is confirmed in full.
150. All other and further motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 13 August 2021 by Leeds United Football Club against the decision issued on 1 June 2021 by the Single Judge of the Players' Status Committee of the *Fédération Internationale de Football Association* is dismissed.
2. The decision issued on 1 June 2021 by the Single Judge of the Players' Status Committee of the *Fédération Internationale de Football Association* is confirmed.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.