



Arbitration CAS 2012/A/3035 Parma FC SpA v. VFL Wolfsburg, award of 26 March 2013

Panel: Mr Manfred Peter Nan (The Netherlands), Sole Arbitrator

Football

Transfer

Financial difficulties as alleged legitimate reason to delay the payment of the transfer fee

Discretion of the CAS to impose a new payment schedule

- 1. Financial difficulties allegedly caused by the failure of the league to distribute the income stemming from television rights and by the European financial reality do not constitute a legitimate reason not to pay a transfer fee or to delay its payment.**
- 2. In the absence of agreement by the creditor, the CAS has no discretion to impose the new payment schedule proposed by the debtor for the outstanding amount that is due.**

I. PARTIES

1. Parma FC S.p.A. (hereinafter: the “Appellant” or “Parma”) is a football club with its registered office in Parma, Italy. Parma is registered with the Italian Football Federation, which in turn is affiliated to the Fédération Internationale de Football Association (hereinafter: “FIFA”).
2. VFL Wolfsburg (hereinafter: the “Respondent” or “Wolfsburg”) is a football club with its registered office in Wolfsburg, Germany. Wolfsburg is registered with the German Football Association, which in turn is affiliated to FIFA.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the parties and the evidence examined in the course of the proceedings. This background is made 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. Although the Sole Arbitrator has considered all the evidence, factual allegations, legal arguments and submissions of the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

4. On 29 August 2009, Wolfsburg and Parma concluded a transfer agreement (hereinafter: the “Transfer Agreement”) for the transfer of the Italian football player C. (hereinafter: the “Player”) from Wolfsburg to Parma.
5. The Transfer Agreement contains, *inter alia*, the following relevant terms:
 - “2. In consideration of the said transfer Parma agrees to pay compensation to Wolfsburg in the sum of € 2.000.000 (two million Euro) payable as follows:
 - 2.1 € 500.000,00 (five hundred thousand Euro) immediately upon receipt of the players International Transfer Certificate.
 - 2.2 € 1.000.000,00 (one million Euro) on 31st July 2010.
 - 2.3 € 500.000,00 (five hundred thousand Euro) on 31st July 2011.”

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

6. On 27 June 2011, Wolfsburg lodged a claim with FIFA against Parma arguing that the latter partially failed to fulfil its contractual obligations. In respect of the first instalment, Wolfsburg maintained that this amount was finally paid by Parma in two instalments, but that it was paid too late and consequently requested interest over the respective periods at a rate of 5% *per annum*, i.e. EUR 26,956.32. In respect of the second instalment, Wolfsburg claimed that only EUR 275,000 had been paid by Parma and consequently requested FIFA to order Parma to pay the remaining EUR 725,000, plus interest at a rate of 5% *per annum*.
7. On 19 July 2011, Parma rejected to pay the amount of default interest as requested by Wolfsburg since the Transfer Agreement did not stipulate anything in this respect. Consequently, Parma asked Wolfsburg to withdraw its claim for interest or to recalculate it at the legal rate of 1,5% applicable at that time in accordance with Italian law. Finally, Parma proposed to pay the remaining amount of EUR 1,225,000 (thereby including the third instalment of the transfer fee that would only fall due on 31 July 2011 and was not yet claimed by Wolfsburg) as follows:
 - EUR 225,000 by 31 July 2011;
 - EUR 200,000 by 30 September 2011;
 - EUR 200,000 by 30 November 2011;
 - EUR 200,000 by 30 January 2012;
 - EUR 200,000 by 30 March 2012;
 - EUR 200,000 by 30 May 2012.
8. On 25 July 2011, Wolfsburg accepted the payment schedule proposed by Parma. However, it refused to reduce the amount it was claiming as default interest.
9. On 5 August 2011, Parma proposed to pay a lump sum of EUR 15,000 in order to cover the requested interest payments.

10. On 18 August 2011, Wolfsburg reiterated that it was not prepared to reduce the amount of default interest and further claimed that Parma had failed to pay the first instalment of EUR 225,000 that fell due on 31 July 2011 as determined in the payment schedule proposed by Parma on 20 July 2011.
11. On 27 August 2011, Wolfsburg informed FIFA that Parma still had not paid anything and pointed out that the third instalment of EUR 500,000 that fell due on 31 July 2011 according to the Transfer Agreement had also become outstanding and amended its claim accordingly. Hence, Wolfsburg claimed a total amount of EUR 1,251,956.30.
12. On 15 September 2011, Parma offered to pay the amount of interest as claimed by Wolfsburg in the amount of EUR 26,956.32 and if Wolfsburg would consent on the rescheduling of the principal debt, it would proceed to make the first payment in the sum of EUR 251,956.31 immediately upon acceptance. The Respondent proposed the following new payment schedule:
 - EUR 225,000 within the date of acceptance of the proposal;
 - EUR 200,000 by 30 November 2011;
 - EUR 200,000 by 30 January 2012;
 - EUR 200,000 by 30 March 2012;
 - EUR 200,000 by 30 May 2012;
 - EUR 200,000 by 31 July 2012.
13. On 27 September 2011, Wolfsburg accepted Parma's proposition but warned the latter that in case of any delay for more than 10 days, the whole outstanding amount would become immediately due and additional interests would apply.
14. On 12 October 2011, Wolfsburg informed FIFA that Parma had not proceeded to pay the due amounts according to the payment schedule proposed by Parma on 15 September 2011 and requested FIFA that a decision be taken.
15. On 20 October 2011, Parma apologised to Wolfsburg with respect to its inability to cover the unpaid amounts due under the Transfer Agreement and reiterated its request to the finding of a mutually satisfactory solution.
16. On 15 August 2012, the Single Judge of the Players' Status Committee of FIFA (hereinafter: the "PSC Single Judge") rendered its decision (hereinafter: the "Appealed Decision"), with, *inter alia*, the following operative part:
 1. *"The claim of [Wolfsburg] is partially accepted.*
 2. *[Parma] has to pay to [Wolfsburg] the total amount of EUR 1,225,000, within 30 days as from the notification of this decision.*
 3. *Additionally, and within the same timeframe, [Parma] has to pay to [Wolfsburg] interest at a rate of 5% per year as follows:*
 - *On the amount of EUR 725,000 as from 1 August 2010 until the date of effective payment.*
 - *On the amount of EUR 500,000 as from 1 August 2011 until the date of effective payment.*

4. *Any further claims lodged by [Wolfsburg] are rejected.*
 5. *In case of non-payment of the abovementioned amount (cf. point 2), plus interest (cf. point 3), within the aforementioned deadline, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*
 6. *(...)"*.
17. On 28 November 2012, upon the request of Parma, the grounds of the Appealed Decision were communicated to the parties determining, *inter alia*, the following:
- *(...) the Single Judge noted that, based on the information received from the Claimant during the course of the present investigation, [Parma] had only paid the total amount of EUR 775,000, representing the first instalment as well as part of the second instalment stipulated in the agreement.*
 - *In view of the above and in accordance with the general principle of pacta sunt servanda, which in essence means that agreements must be respected by the parties in good faith, the Single Judge decided that [Parma] must fulfil the obligation it voluntarily entered into with [Wolfsburg] by means of the agreement signed between the parties, and therefore, [Parma] must pay to [Wolfsburg] the outstanding transfer compensation agreed upon for the transfer of the player.*
 - *Therefore and taking into account that [Wolfsburg] had acknowledged the receipt of an amount of EUR 775,000 from [Parma] and that the latter had confirmed owing the remaining amount to [Wolfsburg], the Single Judge concluded that the remaining sum amounting to EUR 1,225,000 was still outstanding (i.e. EUR 2,000,000 – EUR 775,000) and should therefore be paid by [Parma] to [Wolfsburg].*
 - *With regard to the amount of EUR 26,956.30 requested by [Wolfsburg] as default interest in relation to the first instalment of the agreement, which was apparently paid by [Parma] to [Wolfsburg] in two instalments on 1 April 2010 and 11 October 2010, the Single Judge was keen to emphasise that the agreement did not stipulate that default interest would be due in the event that [Parma] paid any of the instalments (or part thereof) with delay. Therefore, and while referring to the well-established jurisprudence of the Player's Status Committee in similar cases, the Single Judge concluded that [Wolfsburg] should not be entitled to default interest on amounts which had already been paid by [Parma] to [Wolfsburg]. As a consequence, the Single Judge rejected this part of the claim.*
 - *Regarding the remaining amount which was still outstanding, i.e. EUR 1,225,000, and in view of the request of [Wolfsburg], the Single Judge held that an interest of 5% per year over the aforementioned amount should apply as from the day after each of the respective instalments should have been paid by [Parma] to [Wolfsburg] pursuant to the agreement.*
 - *In view of all of the above, the Single Judge decided to partially accept [Wolfsburg's] claim and held that [Parma] must pay to [Wolfsburg] the remaining amount of EUR 1,225,000 together with an interest at a rate of 5% per year on the amount of EUR 725,000 as from 1 August 2010 until the date of effective payment as well as on the amount of EUR 500,000 as from 1 August 2011 until the date of effective payment."*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 17 December 2012, Parma filed a statement of appeal together with 2 exhibits with the Court of Arbitration for Sport (hereinafter: the “CAS”). The Appellant expressed its preference for a Sole Arbitrator to be appointed.
19. On 24 December 2012, the CAS Court Office requested FIFA whether it intended to participate as a party in the present arbitration.
20. On 4 January 2013, FIFA renounced its right to request its possible intervention and provided a clean copy of the Appealed Decision.
21. On 8 January 2013, the Respondent informed the CAS Court Office that it agreed to the appointment of a Sole Arbitrator.
22. On 9 January 2013, Parma filed its appeal brief. This document contained a statement of the facts and legal arguments and was accompanied by 7 exhibits. The Appellant challenged the Appealed Decision taken by the FIFA PSC Single Judge on 15 August 2012, submitting the following requests for relief:
 1. *“to set aside the Challenged Decision;*
 2. *to establish that the Appellant shall pay to the Respondent the amount of EUR 925,000;*
 3. *to establish that the amount due shall be paid in ten equal monthly instalments, with the first instalment due within thirty [sic] from the notification of the award to the parties and the subsequent nine at the end of each following month.*
 4. *to condemn the Respondent to the payment in the favour of the Appellant of the legal expenses incurred;*
 5. *to establish that the costs of the arbitration procedure shall be borne by the Respondent”.*
23. On 29 January 2013, the Respondent filed its answer, with 1 exhibit, whereby it requested CAS to decide the following:
 6. *“To fully dismiss the requests of the Appellant.*
 7. *To order the Appellant to bear the full costs of the CAS procedure.*
 8. *To reimburse the legal costs and expenses of the Respondent to an amount of at least EUR 10.000,00”.*
24. On 12 February 2013, pursuant to Article R54 of the Code of Sports-related Arbitration (hereinafter: the “CAS Code”), and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to decide on the present matter was constituted as follows: Mr Manfred Peter Nan, attorney-at-law in Arnhem, the Netherlands, as Sole Arbitrator.

25. On 19 February 2013, the CAS Court Office informed the parties that the Sole Arbitrator had decided not to hold a hearing in the present matter following the parties' agreement to have an award rendered on the basis of the parties' written submissions.
26. On 20 and 27 February 2013 respectively, the Respondent and the Appellant filed signed copies of the Order of Procedure with the CAS Court Office. Both parties agreed that their right to be heard had been respected.
27. The Sole Arbitrator confirms that he took into account all the submissions, evidence and arguments presented by the parties, even if they have not been specifically summarized or referred to in the present award.

IV. SUBMISSIONS OF THE PARTIES

28. The following outline of the parties' positions is illustrative only and does not necessarily encompass every contention put forward by the parties. However, the Sole Arbitrator has carefully considered all the submissions made by the parties, even if there is no specific reference to those submissions in the following summaries.
29. The submissions of Parma, in essence, may be summarized as follows:
 - Parma maintains that it is ready to settle the dispute amicably and that the present proceedings accrued from a misunderstanding between the parties in respect of the timeline for the payments. Parma alleges that it had timely notified Wolfsburg that because of its critical financial situation, the payments due to the latter under the Transfer Agreement could not have been paid as previously agreed and proposed Wolfsburg to reconsider the payment deadlines. Throughout the proceedings, Parma expressed its deepest concerns in being able to cover the indebtedness and was constantly searching for possible options to satisfy Wolfsburg.
 - Therefore, Parma does not dispute the entitlement of Wolfsburg to the outstanding amounts arising from the Transfer Agreement and maintains that Wolfsburg's initial claim for an amount of EUR 925,000 is undisputed.
 - Notwithstanding Parma's willingness to comply with its financial obligations under the Transfer Agreement, it is now facing substantial difficulties in its budgetary arrangements. In the 2010/2011 season, Parma found itself in serious financial hardship due to the failure of the *Lega Nazionale Professionista Serie A* (hereinafter: the "Serie A Professional Football League in Italy") to distribute the income deriving from television rights and the European financial reality at that moment. Evidently, this affected the financial planning of Parma and therefore entailed delays in covering the amounts due to Wolfsburg as well as to its other creditors.
 - However, despite its financial difficulties, Parma is eager to search for the appropriate way to pay the transfer fee to Wolfsburg. In this respect, Parma would like to

respectfully solicit the Sole Arbitrator to establish the payment of the outstanding debt in 10 equal instalments in order to be in a position to arrange for the timely transfers of the amounts in question.

30. The submissions of Wolfsburg, in essence, may be summarised as follows:

- Wolfsburg maintains that the facts put forward by Parma in its appeal brief do not contain one single argument why the Appealed Decision should be wrong. Although the facts referred to by Parma in its appeal brief remain widely undisputed by Wolfsburg, the latter argues that Parma failed to mention that Wolfsburg had been very patient throughout the proceedings and accepted several offers from Parma to extend the payment plan originally stipulated in the Transfer Agreement, without being legally obliged to do so.
- Wolfsburg further points out that on 15 September 2011 Parma confirmed that an amount of EUR 1,225,000 was due and at the same time even confirmed to pay the default interest arising from the late payments. In continuation, Wolfsburg submits that FIFA – despite of this acknowledgement – refused to grant the default interest to Wolfsburg, which was surprising enough. Yet, due to the amount at stake and the fact that it was interest only, Wolfsburg decided not to challenge the Appealed Decision itself.
- Wolfsburg finds that it was certainly free to request default interest and/or penalty clauses in trying to come to an agreement with Parma about a payment plan. If Parma was not prepared to accept such preconditions of any further courtesy of Wolfsburg, the legal consequence thereof is simple: the payment obligations pursuant to the Transfer Agreement remain in force and unaffected with the consequence that the amounts granted by the FIFA PSC Single Judge, plus the consecutive interest of 5% per year are still payable and overdue for long.
- The intention or conclusion of Parma is unclear; apparently Parma thinks that by failing to obtain an agreement about a payment plan and an interest rate, the payment obligation is no longer due, which is obviously wrong. It is also wrong and hard to understand why and how Parma should have suffered financial damage because of this.
- Although Parma could have shown good faith by at least paying some partial amounts, it preferred to pay nothing, but, on the other side, according to transfer databases on the internet, signed new players and by this incurred new liabilities before satisfying the old ones for transfer fees of EUR 12,400,000 in the season 2010/2011, EUR 9,200,000 in the season 2011/2012 and EUR 15,650,000 in the season 2012/2013. Wolfsburg maintains that, despite being aware that this is legally irrelevant, it shows nevertheless that Parma is not honest with Wolfsburg and seeks for nothing but time, without showing any good faith or readiness to comply with its payment obligations.

- Parma remains silent about why the debt shall be only EUR 925,000, whereas by letter dated 15 September 2011 it confirmed and acknowledged to owe an amount of EUR 1,225,000 (plus interest) to Wolfsburg.
- Regarding the payment plan proposed by Parma in its appeal brief, Wolfsburg argues that this amount is too low by EUR 300,000 and that CAS has no discretion to decide about a payment plan as requested by Parma. It is a pure discretion of Wolfsburg to decide if they show any courtesy to Parma, which it will not do.
- Wolfsburg maintains that the request of Parma to claim that all the costs of the procedure are to be borne by Wolfsburg is absurd, as it acknowledged to owe a large sum of money to Wolfsburg. Therefore, the latter requests that the procedural costs of CAS are to be borne in their entirety by Parma and requests CAS to proceed fast with the arbitration since it is obviously only intended to gain further time.

V. ADMISSIBILITY

31. The appeal was filed within the deadline of 21 days set by article 63(1) of the FIFA Statutes. Furthermore, it complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fees.
32. It follows that the appeal is admissible.

VI. JURISDICTION

33. The jurisdiction of CAS, which is not disputed, derives from article 63 of the FIFA Statutes 2010 edition and Article R47 of the CAS Code. Moreover, the jurisdiction of CAS is confirmed by the Order of Procedure duly signed by the parties.
34. It follows that CAS has jurisdiction to decide on the present dispute.

VII. APPLICABLE LAW

35. Article R58 of the CAS Code provides the following:

“The Panel shall decide the dispute according to the applicable regulations and 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 application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

36. The Sole Arbitrator notes that article 62(2) of the FIFA Statutes provides the following:

“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”.

37. In the present matter, the parties have not agreed on the application of any particular law. Therefore, the rules and regulations of FIFA shall primarily govern the present dispute, whereby Swiss law shall apply in the event the interpretation or construction of the FIFA rules and regulations is required.

VIII. MERITS

A. The Main Issues

38. The main issues to be resolved by the Sole Arbitrator are:

- a) Did the Appellant put forward any legitimate reason as to why the amount awarded in the Appealed Decision should not be awarded?
- b) Can the Respondent be bound by the payment plan as proposed by the Appellant?

a) *Did the Appellant put forward any legitimate reason as to why the amount awarded in the Appealed Decision should not be awarded?*

39. The Sole Arbitrator observes that on the basis of the Transfer Agreement, Parma had to pay Wolfsburg an amount of EUR 2,000,000 (in three instalments) regarding the transfer of the Player.
40. The Sole Arbitrator acknowledges that it is undisputed that Parma only paid the total amount of EUR 775,000, representing the first instalment, as well as part of the second instalment as stipulated in the Transfer Agreement.
41. Parma maintains that it is ready to settle the dispute amicably and that the present proceedings accrued from a misunderstanding between the parties in respect of the timeline for the payments.
42. Parma alleges that it had timely notified Wolfsburg that because of its critical financial situation, the payments due to the latter under the Transfer Agreement could not have been paid as previously agreed and proposed Wolfsburg to reconsider the payment deadlines. Parma found itself in serious financial hardship due to the failure of the Serie A Professional Football League in Italy to distribute the income deriving from television rights and the European financial reality at that moment.
43. Wolfsburg maintains that the facts as put forward by Parma in its appeal brief do not contain one single argument why the Appealed Decision should be wrong.

44. Additionally, Wolfsburg argues that although Parma could have shown good faith by at least paying some partial amounts, it preferred to pay nothing, but, on the other side, according to transfer databases in the internet – signed new players and by this incurred new liabilities before satisfying the old ones for transfer fees of EUR 12,400,000 in the season 2010/2011, EUR 9,200,000 in the season 2011/2012 and EUR 15,650,000 in the season 2012/2013. Wolfsburg maintains that, despite being aware that this is legally irrelevant, it shows nevertheless that Parma is not honest with Wolfsburg and seeks for nothing but time, without showing any good faith or readiness to comply with its payment obligations.
45. Finally, Wolfsburg finds that Parma remains silent about why the debt shall be only EUR 925,000, whereas by letter dated 15 September 2011 it confirmed and acknowledged to owe an amount of EUR 1,225,000 (plus interest) to Wolfsburg.
46. The Sole Arbitrator is not convinced by the argument put forward by Parma that it did not comply with its payment obligations due to a misunderstanding between the parties. To the contrary, the Sole Arbitrator finds the payment obligations deriving from the Transfer Agreement and subsequent payment schedules to be very clear.
47. The Sole Arbitrator finds that the alleged financial difficulties of Parma are not a reason why Wolfsburg should not be entitled to the payments deriving from the Transfer Agreement. At the moment Parma concluded the Transfer Agreement with Wolfsburg, it should have realised the consequences deriving from such agreement. Parma's allegation that its financial difficulties are caused by the alleged failure of the Serie A Professional Football League in Italy to distribute the income stemming from television rights and the European financial reality at the moment are risks that are to be borne by Parma itself and do not validate the transfer fee concerning the Player to remain outstanding.
48. Consequently, the Sole Arbitrator finds that Parma did not put forward any valid reason as to why Wolfsburg should not be entitled to the outstanding amounts and already for this reason the appeal is to be dismissed.
49. In addition, the Sole Arbitrator wishes to emphasise that he finds Wolfsburg's conduct during the entire proceedings irreprehensible. Wolfsburg initially showed sympathy for Parma's financial difficulties and, although not being obliged to do so, agreed to two subsequent payment schedules proposed by Parma.
50. The Sole Arbitrator shares Wolfsburg's view that it remains unclear why Parma initially acknowledged (by letters dated 19 July and 15 September 2011 to FIFA) having to pay an amount of EUR 1,225,000 plus interest to Parma and that it now only acknowledges having to pay an amount of EUR 925,000. In the absence of any reason and/or evidence provided by Parma as to why it should only have to pay EUR 925,000 to Wolfsburg, the Sole Arbitrator has no hesitation to conclude that Parma should pay the outstanding amount of EUR 1,225,000 plus interest to Wolfsburg as held by the FIFA PSC Single Judge in the Appealed Decision.

b) *Can the Respondent be bound by the payment plan as proposed by the Appellant?*

51. In its appeal brief, Parma maintains that it is eager to search for the appropriate way to pay the transfer fee to Wolfsburg. In this respect, Parma requested the Sole Arbitrator to establish the payment of the outstanding debt in 10 equal instalments in order to be in a position to arrange for the timely transfers of the amounts in question.
52. In this respect, Wolfsburg argues that CAS has no discretion to decide about a payment plan as requested by Parma. It is a pure discretion of Wolfsburg to decide if it shows any further courtesy to Parma, which it will not do.
53. The Sole Arbitrator fully adheres to the position of Wolfsburg in this respect. As determined *supra*, the entire outstanding amount deriving from the Transfer Agreement concluded between Parma and Wolfsburg fell due. In the absence of Wolfsburg's consent thereto, the Sole Arbitrator cannot impose a new payment schedule on the parties. Furthermore, Parma has not adduced any evidence of its financial difficulties. It simply affirmed such difficulties. In those circumstances, the Sole Arbitrator is of the opinion that no breach of public policy could be retained which could exceptionally justify imposing a payment plan by instalments in favour of Parma.
54. As a consequence, Wolfsburg is entitled to the full amount awarded by the FIFA PSC Single Judge in the Appealed Decision.

B. Conclusion

55. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Sole Arbitrator finds that:
- a) The Appellant did not put forward any legitimate reason as to why Wolfsburg should not be entitled to the full amount awarded in the Appealed Decision. Consequently, the amount awarded by the FIFA PSC Single Judge is confirmed.
 - b) The Respondent cannot be bound by the payment plan as proposed by the Appellant in its appeal brief.
56. Consequently, the Sole Arbitrator confirms the Appealed Decision in full. Any other prayers and requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Parma FC S.p.A. on 17 December 2012 against the Decision issued on 15 August 2012 by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association is dismissed.
2. The Decision issued on 15 August 2012 by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.