



Arbitration CAS 2020/A/6861 Club Atlético San Lorenzo de Almagro v. Club Deportivo Palestino S.A.D., award of 9 June 2021

Panel: Mr José Juan Pintó (Spain), President; Mr Mariano Clariá (Argentina); Prof. Ulrich Haas (Germany)

Football

Transfer with a sell-on clause

Real intention of the parties

Definition of “net amount”

Principle venire contra factum proprium

1. When the mutually agreed intention of the parties cannot be established, the real intention of the parties has to be analyzed according to the requirements of the good faith. Therefore, the judging authority shall seek how a declaration of the external manifestation of a party could have been reasonably understood dependent upon the individual circumstances of the case. The emphasis has to be not so much on what a party may have meant but on how a reasonable man would have understood his declaration. When trying to determine the intent of a party or the intent that a reasonable person would have had in the same circumstances, it is necessary to analyze firstly the actual wording used by the parties.
2. The term “net amount” shall refer to the final amount the creditor expects to receive in its bank account. Therefore the proper interpretation of said term has to be understood to be “without any deduction” in the sense that the agreed net amount must exactly correspond to the amount which finally is maintained by the creditor. It is a common understanding in the practice of sports contracts that a “net amount” refers to the final amount the creditor expects to receive in its bank account once all the different taxes, charges, expenses or all sort of operational costs are paid, regardless if they are due to any official tax authorities or any third parties.
3. The principle of *venire contra factum proprium* provides that when a conduct of one party has led to raise legitimate expectations on the second party, the first party is barred from changing its course of action to the detriment of the second party. A party violates the principle of *venire contra factum proprium* if it has induced the other party (through its previous behaviour) to legitimately rely on certain assumptions.

I. PARTIES

1. Club Atlético San Lorenzo de Almagro, (hereinafter “San Lorenzo” or “the Appellant”) is an Argentinian professional football club with its registered office in Buenos Aires, Argentina. San Lorenzo is affiliated to the Argentinian Football Association (*Asociación del Fútbol Argentino*), which in turn is affiliated to the *Fédération Internationale de Football Association* (hereinafter, “FIFA”).
2. Club Deportivo Palestino (hereinafter “Palestino” or “the Respondent”) is a Chilean professional football club, with its registered office in Santiago de Chile, Chile. Palestino is a member of the Football Federation of Chile (*Federación de Fútbol de Chile*), which in turn is affiliated to FIFA.

II. FACTUAL BACKGROUND

3. A summary of the most relevant facts and the background giving rise to the present dispute will be developed based on the parties’ written submissions, the evidence filed with these submissions, and the statements made by the parties at the hearing held in the present case. Additional facts may be set out, where relevant, in connection with the legal discussion which follows. The Panel refers in the present Award only to the submissions and evidence it considers necessary to explain its reasoning. The Panel, however, has considered all the factual allegations, legal arguments and evidence submitted by the parties in the present proceedings.
4. On 26 May 2015, Palestino and Blanco y Negro S.A. Club Deportivo Colo-Colo (hereinafter “Colo Colo”), signed a transfer agreement (hereinafter the “First Agreement”) for the transfer of 100% of the federative rights and 50% of the economic rights corresponding to the player P. (hereinafter the “Player”), from Palestino to Colo Colo.
5. The First Agreement provides for a fixed transfer fee that Colo Colo had to pay to the Respondent, namely USD 600.000 payable in 4 instalments: US 166.666,67 upon the signing of the transfer agreement; USD 166.666,67 on 30 June 2015; USD 166.666,67 on 30 July 2015 and USD 100.000 on 30 May 2016. Moreover, the parties agreed to include a sell-on clause in which it was stated that if Colo Colo received an offer to purchase 100% of the player's federative and economic rights equal to, or greater than, USD 5,000,000, it would be obliged to accept such an offer and transfer the Player, and both Clubs would receive 50% of the agreed transfer fee. The relevant part of the First Agreement reads as follows:

“[...] SEGUNDO: Objeto.

2.1.- En este acto y por el presente contrato, PALESTINO vende, cede y transfiere a BNSA, quien compra, acepta y adquiere para sí el 100% de los derechos federativos y el 50% de los derechos económicos correspondientes al Jugador, por el precio establecido en la cláusula Tercera siguiente. En consecuencia, BNSA queda como legítimo titular y propietario del 100% de los derechos federativos y del 50% de los derechos económicos correspondientes al Jugador.

[...] TERCERO: Precio.

3.1.- BNSA y PALESTINO acuerdan como valor de la transferencia del 100% de los derechos federativos y el 50% de los derechos económicos, más los gastos de la operación, y ya deducido el 10% total del valor que corresponderá cancelar a cada Club según se especifica en el numeral 3.3 de la presente cláusula.,[sic.] la suma líquida, única y total de US\$600.0000- (seiscientos mil dólares de los Estados Unidos de América), en su equivalente en pesos según el valor del dólar observado por el Banco Central de Chile el día del pago efectivo. El monto líquido ya indicado, se cancelará al Club Deportivo Palestino S.A.D.P., en 4 cuotas que se pagarán de la siguiente forma:

1. Primera cuota de US\$166.666,67 (ciento sesenta y seis mil seiscientos sesenta y seis dólares americanos 67/100), que se deberá cancelar al momento de la firma del presente contrato.
2. Segunda cuota de US\$166.666,67 (ciento sesenta y seis mil seiscientos sesenta y seis dólares americanos 67/100), que se deberá cancelar el 30 de junio de 2015.
3. Tercera cuota de US\$166.666,67 (ciento sesenta y seis mil seiscientos sesenta y seis dólares americanos 67/100), que se deberá cancelar el 30 de julio de 2015.
4. Cuarta cuota de US\$100.000,00 (cien mil dólares americanos 00/100), que se deberá cancelar el 30 de mayo de 2016.

CUARTO: Clausula [sic.] de Salida.

En caso que el club Colo-Colo (BNSA) reciba una oferta de compra por el 100% de los derechos federativos y económicos del jugador igual o superior a la cifra de US\$5.000.000.- (cinco millones de dólares de los Estados Unidos de Norteamérica), ambos Clubes recibirán US\$2.500.000 (dos millones quinientos mil dólares de los Estados Unidos de Norteamérica), estando éstos obligados a vender al jugador si éste lo solicita.

Sin perjuicio de lo anterior se deja expresa constancia que PALESTINO se reserva el derecho de aceptar o rechazar cualquier tipo de oferta por el Jugador por montos inferiores a los establecidos en el párrafo precedente ...”.

Freely translated into English by the Panel as follows:

“SECOND: Object.

2.1.- In this act and by the present agreement, PALESTINO sells, assigns and transfers to BNSA, who purchases, accepts and acquires 100% of the federative rights and 50% of the economic rights corresponding to the Player, for the price established in the following Third clause. Consequently, BNSA remains as the legitimate holder and owner of 100% of the federative rights and 50% of the economic rights corresponding to the Player. [...]

THIRD: Price.

3.1.- BNSA and PALESTINO agree as the transfer value of 100% of the federative rights and 50% of the economic rights, plus the expenses of the transaction, and already deducted the 10% total value that will correspond to cancel to each Club as specified in the numeral 3.3 of the present clause, the total and unique amount of US\$600,000 (six hundred thousand United States dollars), in its equivalent in Pesos according to

the dollar value observed by the Central Bank of Chile on the day of the effective payment. The liquidated amount already indicated, will be paid to Club Deportivo Palestino S.A.D.P., in 4 installments that will be paid as follows:

- 1. First installment of US\$166,666.67 (one hundred and sixty-six thousand six hundred and sixty-six American dollars with sixty-seven cents 67/100), which must be paid at the signing of this agreement.*
- 2. Second installment of US\$166,666.67 (one hundred and sixty-six thousand six hundred and sixty-six American dollars with sixty-seven cents 67/100), to be paid on June 30, 2015.*
- 3. Third installment of US\$166,666.67 (one hundred and sixty-six thousand six hundred and sixty-six American dollars with sixty-seven cents 67/100), to be paid on 30 July 2015.*
- 4. Fourth installment of US\$100,000.00 (one hundred thousand US dollars 00/100), to be paid on 30 May 2016. [...]*

FOURTH: Sell-On Clause [sic].

In the event that Colo-Colo Club (BNSA) receives an offer to purchase 100% of the player's federative and economic rights equal to, or greater than US\$5,000,000. - (five million US dollars), both Clubs will receive US\$2,500,000 (two and a half million US dollars), being Colo Colo obliged to sell the player if it is requested.

Notwithstanding the above, it is expressly stated that PALESTINO reserves the right to accept or reject any type of offer for the Player for amounts less than those established in the precedent paragraph”.

6. On 11 February 2016, Colo Colo and San Lorenzo signed a transfer agreement (hereinafter the “Second Agreement”) for the transfer of 100% of the federative rights and 50% of the economic rights of the Player in possession of Colo Colo. The Appellant acknowledged that Palestino was the owner of the remaining 50% of the economic rights and expressly stated that in the event that the club transferred the Player to a third party, it would recognize in favor of Palestino the corresponding amount according to the proportion of economic rights that would correspond at that time, over the “*producido neto*” (net output) of the transaction. The Second Agreement reads as follows in its relevant part:

“[...] 2) BNSA es el dueño único y exclusivo del 100% (cien por ciento) de los derechos federativos y el 50% (cincuenta por ciento) de los derechos económicos del Jugador, como así de la plena disponibilidad de sus servicios deportivo-profesionales, manifestando no encontrarse inhibido para disponer de la totalidad de esos derechos, respecto de los cuales declara hallarse plenamente vigentes; en consecuencia se obliga a ceder los mismos a favor de SAN LORENZO, sin restricciones ni limitación alguna, en las condiciones establecidas en las cláusulas siguientes.

3) El SAN LORENZO desea adquirir desde BNSA el 100% (cien por ciento) de los derechos federativos del JUGADOR y el 50% (cincuenta por ciento) de los derechos económicos del mismo, derechos que BNSA está de acuerdo en consentir y otorgarle al club SAN LORENZO.

4) BNSA pone en conocimiento de SAN LORENZO que el Club Deportivo Palestino SADP, perteneciente y asociado a la ANFP, es titular y propietario del restante 50% (cincuenta por ciento) de derechos económicos del JUGADOR, los que de ninguna manera son objeto del presente contrato.

5) BNSA declara que la tenencia de derechos a favor del Club Deportivo Palestino SADP no lo inhibe de disponer libremente de los derechos que por este contrato transfiere.

[...] 2.- OBJETO

Por medio del presente documento BNSA vende, cede y transfiere el 100% (cien por ciento) de los derechos federativos y el cincuenta por ciento (50%) de los derechos económicos del JUGADOR P. y el Club SAN LORENZO de Almagro, los acepta y adquiere para sí.

Producto de lo anterior, SAN LORENZO queda como legítimo titular y propietario del 100% de los derechos federativos y el 50% de los derechos económicos del JUGADOR, manteniéndose el 50% restante de los derechos económicos en propiedad del club Palestino.

4.- PRECIO

4.1. Las partes acuerdan como valor de la transferencia del 100% de los derechos federativos y del 50% de los derechos económicos la suma única y total de US\$1.000.000 (un millón de dólares de los Estados Unidos de América) netos, valor que se cancelará de la siguiente forma:

(i) La suma de US\$500.000.- (quinientos mil dólares de los Estados Unidos de América) netos, que se pagan al contado en el presente acto mediante transferencia bancaria

(ii) La suma de US\$250.000.- (doscientos cincuenta mil dólares de los Estados Unidos de América) netos, a cancelar dentro de los 30 días siguientes a la fecha de suscripción del presente contrato.

(iii) La suma de US\$250.000.- (doscientos cincuenta mil dólares de los Estados Unidos de América), que deberán ser pagadas [sic.] dentro de los 60 días siguientes a la fecha de suscripción del presente contrato.

[...] 5.- DECLARACIÓN Y GARANTÍA

5.1 BNSA pone en conocimiento de SAN LORENZO que el Club Deportivo Palestino SADP es titular y propietario del 50% de los derechos económicos del Jugador. En consecuencia, SAN LORENZO declara que dicho porcentaje se mantendrá sobre los derechos económicos del JUGADOR al momento de la firma del presente acuerdo y de la suscripción del contrato laboral entre SAN LORENZO y el JUGADOR P.

5.2 BNSA declara que es la única parte con derecho a ejecutar el presente contrato de acuerdo a la legislación nacional y las pertinentes regulaciones de la FIFA y para reclamar cualquier concepto por la transferencia del JUGADOR entre ambos clubes, bajo los términos anteriormente expuesto y en los porcentajes sobre derechos federativos y económicos señalados.

5.3 BNSA declara que no se encuentra inhibido para disponer de la totalidad de esos derechos (100% de los federativos y 50% de los económicos que de ellos se derivan), respecto de los cuales declara hallarse

plenamente vigentes, cediendo los mismos a favor de SAN LORENZO, sin restricciones ni limitación alguna, en las condiciones establecidas en el presente contrato. [...]

7.- CLÁUSULA DE SALIDA.

7.1 Para el caso que SAN LORENZO disponga una futura transferencia de los derechos federativos de EL JUGADOR a cualquier otro club de fútbol asociado a FIFA, bajo cualquier modalidad, sea en forma definitiva o temporal (contrato a préstamo), de la Argentina o del exterior, SAN LORENZO se compromete a reconocer a favor del Club Deportivo Palestino SADP, el importe correspondiente según las proporciones de derechos económicos que correspondan en ese momento, sobre el producido neto que arroje la operación.

7.2 Se entenderá por producido neto que origina la operación, el precio bruto de la venta y/o préstamo deducidos en la proporción correspondiente todos los gastos, impuestos, aranceles, tasas, aportes y todo otro concepto que grave la misma existente o a crearse al momento de la transferencia por parte de la Administración Pública Nacional de la Argentina, por la AFA, por la FAA o por FIFA incluido el mecanismo de solidaridad (ART. 20 y 21 del RETJ FIFA) que pudiera corresponder, y el porcentual que por derecho corresponde a EL JUGADOR (Art. 8 C.C.T. 557/09). El club SAN LORENZO por este acto acuerda obligarse a poner término anticipado al contrato de trabajo que celebre con el JUGADOR P., en el evento que durante la vigencia del contrato entre SAN LORENZO y el JUGADOR, se reciba por cualquiera de las partes (SAN LORENZO, y Palestino) una oferta formal de compra de parte de un Club Nacional o Extranjero, debidamente documentada por el 100% de los derechos federativos y el 100% de los derechos económicos, por una suma neta igual o superior a USD 5.000.000 (cinco millones de dólares de los Estados Unidos de América) netos. En virtud de lo anterior, SAN LORENZO estará obligado a proceder a la transferencia del JUGADOR y el resultado de la venta se repartirá entre los clubes (SAN LORENZO y Palestino) de acuerdo con los porcentajes que cada uno de ellos ostente sobre la propiedad de derechos económicos del JUGADOR al momento de la venta. Sin perjuicio de ello, SAN LORENZO – de las sumas que perciba- deberá cancelar a BNSA el importe adicional un millón de dólares estadounidenses (us\$1.000.000.-).

7.3 En el caso que SAN LORENZO, decidiera negarse a la transferencia del JUGADOR, se obliga por este acto a indemnizar a BNSA y Palestino SADP en los términos señalados en el párrafo anterior, tomando como base de cálculo para dicha indemnización el precio de la oferta presentada”.

Translation produced by the Appellant and not contested by The Respondent:

“[...] 2) BNSA is the sole and exclusive owner of 100% (one hundred percent) of the federative rights and of the 50% (fifty percent) of the economic rights of the Player as well as of the full availability of his professional sports services and states that it can dispose of all such rights that are in full force and effect; consequently, it agrees to assign such rights to SAN LORENZO, without any restriction or limitation whatsoever subject to the terms and conditions set forth below.

3) SAN LORENZO wishes to purchase from BNSA 100% (one hundred percent) of the federative rights and 50% (fifty percent) of the economic rights of the Player, rights that BNSA agrees to consent and grant to the club SAN LORENZO.

4) BNSA informs SAN LORENZO that Club Deportivo Palestino SADP, which belongs and is associated to the ANFP, is the owner of the remaining 50% (fifty percent) of the economic rights of the Player, which are not part of the subject matter of this agreement

5) BNSA states that the ownership of rights of Club Deportivo Palestino SADP does not affect the free disposal of rights herein agreed upon [...]

2.- SUBJECT MATTER

BNSA herein sells, assigns and transfers the 100% (one hundred percent) of the federative rights and the 50% (fifty percent) of the economic rights of the Player P. and the Club SAN LORENZO DE ALMAGRO accepts and purchases such rights.

Considering the above mentioned, SAN LORENZO becomes the lawful owner of the 100% of the federative rights and of the 50% of the economic rights of the Player and the remaining 50% of the economic rights remain owned by the Palestinian club.

4.- PRICE

4.1 The parties agree as transfer value for the 100% of the federative rights and for the 50% of the economic rights the sole and total net amount of USD 1,000,000 (United States Dollars one million) which will be paid as follows:

(i) the net amount of USD 500,000 (United States Dollars five hundred thousand), which will be paid in cash herein by bank transfer.

(ii) the net amount of USD 250,000 (United States Dollars two hundred and fifty thousand), which will be paid within 30 days after the execution of this agreement,

(iii) the amount of USD 250,000 (United States Dollars two hundred and fifty thousand), which will be paid within 60 days after the execution of this agreement. [...]

5.- STATEMENTS AND WARRANTIES

5.1 BNSA informs SAN LORENZO that Club Deportivo Palestino SADP is the owner of the 50% of the economic rights of the Player. Consequently, SAN LORENZO declares that such percentage will be maintained over the economic rights of the Player at the time of execution of this agreement and the execution of the employment contract between SAN LORENZO and the Player P.

5.2 BNSA declares to be the only party with rights to enter into this agreement pursuant to national laws and regulations of the FIFA and to claim any amount for the transfer of the Player between both clubs, subject to the above mentioned terms and pursuant to the percentages on the mentioned federative and economic rights.

5.3 BNSA declares not to be prohibited from disposing all of such rights (100% of the federative rights and 50% of economic rights resulting therefrom) and that they are in full force and effect; moreover, it assigns

them in favor of SAN LORENZO without any restriction or limitation whatsoever and subject to the conditions herein set forth. [...]

7.- EXIT CLAUSE.

7.1 In case SAN LORENZO decides a future transfer of federative rights of the Player to any other football club associated to FIFA under any modality, whether it is final or temporary (loan agreement), in Argentina or abroad, SAN LORENZO agrees to acknowledge in favor of Club Deportivo Palestino SADP, the pertinent amount considering the proportion of the economic rights at such time on the net proceeds of the transaction.

7.2 Net proceed of the transaction means the gross price of the sale and/or loan after deduction of the pertinent percentage corresponding to expenses, taxes, fees, duties, contributions and any other amount to be deducted from it already existing or created at the moment of transfer by the Argentine Tax Authorities [Administración Pública Nacional], the AFA, the FAA or FIFA, including the solidarity mechanism (Sections 20 and 21 of RETJ FIFA) that may correspond and the percentage that corresponds to the Player (section 8 CCT No. 557/09). SAN LORENZO hereby agrees to early terminate the employment contract entered into with the Player P. in case during the effectiveness of the agreement between SAN LORENZO and the Player, any of the parties (SAN LORENZO and Palestino) receives a formal purchase offer from a Domestic or Foreign Club duly documented for the 100% of the federative rights and the 100% of the economic rights, for a net amount equal or higher than USD 5,000,000 (United States Dollars five million). By virtue of the above mentioned, SAN LORENZO will be bound to transfer the Player and the proceeds of the sale will be divided between the clubs (SAN LORENZO and Palestino) pursuant to their pertinent percentages on the ownership of economic rights of the Player at the time of the sale. Irrespective of such fact, SAN LORENZO out of the amounts received, must pay BNSA the additional amount of USD 1,000,000 (United States Dollars one million).

7.3 In case SAN LORENZO refuses to transfer the Player, it agrees herein to indemnify BNSA and Palestino SADP pursuant to the provisions of paragraph above, being the bases of calculation of such compensation the price of the offer submitted. Such amount will be paid within 30 days after submission of the offer for the transfer of the Player”.

7. On 14 March 2018, San Lorenzo sent a letter to Palestino informing of its interest in acquiring the remaining 50% of the economic rights of the Player owned by Palestino, and offering the payment of USD 1.250.000 for such economic rights. The referred letter established the following:

“De acuerdo con las conversaciones mantenidas confirmamos a Uds. el interés del Club Atlético San Lorenzo de Almagro por adquirir el 50% de los derechos económicos del jugador P. (el “Jugador”), pertenecientes al Club Deportivo Palestino, en adelante los “Derechos Económicos”. Destacamos que el Jugador mantiene con nuestra institución un contrato laboral vigente hasta junio de 2020.

En virtud de lo expuesto el Club Atlético San Lorenzo de Almagro presenta formalmente, para vuestra consideración, una oferta de compra de los Derechos Económicos por un previo efectivo de un millón doscientos cincuenta mil dólares estadounidenses y la cesión de un jugador profesional”

El pago de u\$s 1.250.000, netos, se realizará de la siguiente forma:

- i. La suma de u\$s 250.000 (doscientos cincuenta mil dólares) se cancelará mediante transferencia bancaria a la cuenta que Uds. indiquen en un plazo que no podrá exceder del 30 de junio de 2018;*
- ii. La suma de u\$s 500.000 (quinientos mil dólares) se cancelarán mediante transferencia bancaria a la cuenta que Uds. indiquen en un plazo que no podrá exceder del 30 de diciembre de 2018;*
- iii. La suma de u\$s 500.000 (quinientos mil dólares) se cancelará mediante transferencia bancaria a la cuenta que Uds. indiquen en un plazo que no podrá exceder del 30 de junio de 2019.*

Adicionalmente y como parte complementaria de esta operación, el Club Atlético San Lorenzo de Almagro ofrece la cesión del 70% de los derechos económicos y el 100% de los derechos federativos del jugador Rodrigo Tapia, actualmente en préstamos (sic) en el Club Deportivo Palestino”.

Freely translated into English as follows:

“According to the conversations held we confirm to you the interest of Club Atlético San Lorenzo de Almagro in acquiring 50% of the economic rights of the player P. (the "Player"), belonging to Club Deportivo Palestino, hereinafter the "Economic Rights". We emphasize that the Player has an employment contract with our club that runs until June 2020.

By virtue of the foregoing, Club Atlético San Lorenzo de Almagro formally presents for your consideration an offer to purchase the Economic Rights for the price of one million two hundred and fifty thousand US dollars and the loan of a professional player”.

The payment of u\$s 1.250.000, net, would be made in the following way:

- i. The sum of u\$s 250,000 (two hundred and fifty thousand dollars) shall be paid by means of a bank transfer to the account indicated by Palestino within a period not exceeding 30 June 2018;*
- ii. The amount of u\$s 500,000 (five hundred thousand dollars) shall be paid by means of a bank transfer to the account indicated by Palestino within a period that cannot exceed December 30, 2018;*
- iii. The amount of u\$s 500.000 (five hundred thousand dollars) shall be paid by means of a bank transfer to the account indicated by Palestino within a period that cannot exceed 30 June 2019.*

Additionally, and as a complementary part of this transaction, Club Atlético San Lorenzo de Almagro offers the transfer of 70% of the economic rights and 100% of the federative rights of the player Rodrigo Tapia, currently on loan at Palestino”.

8. The above letter remained unanswered by Palestino.
9. On 11 August 2018, Palestino sent a letter to San Lorenzo establishing that:

“en el escenario hipotético de cualquier posible transferencia o préstamo del Jugador desde su club, CD Palestino tendrá derecho a recibir el cincuenta por ciento (50%) de cualquier cantidad que surja de dicha transferencia o préstamo”.

Free translated into English as follows:

“In the hypothetical scenario of any possible transfer or loan of the Player from your club, CD Palestino will be entitled to receive fifty percent (50%) of any amount arising from said transfer or loan”.

10. On the same date, San Lorenzo and Al-Ahli Sports Club (hereinafter, “Al-Ahli”), signed a transfer agreement (hereinafter the “Third Agreement”) of the Player.
11. In accordance with the Third Agreement, Al-Ahli agreed to pay to the Respondent a fixed transfer fee of USD 4.300.000 plus the amount of USD 1.105.100 as taxes. In its most relevant part, the Third Agreement reads as follows:

“[...]Article 1- Agreement to Transfer Registration

The player will be transferred from [sic.] Club San Lorenzo to Club Al-Ahli as from from [sic.] 15th August 2018. Club San Lorenzo will give the necessary direction to the FIFA to issue the International Transfer Certificate (I.T.C.) for the International transfer of The Player to Club [sic.] Al-Ahli on or before August 20.2018.

Article 2- Indemnification Amount

2.1 Club Al-Ahli shall pay to Club San Lorenzo, as Transfer Fee, the amount of US\$ 4.300.000 (four million three hundred thousand U.S. Dollars), plus the amount of US\$ 1.105.100 (one million one hundred five thousand one hundred U.S. Dollars) as Taxes according to the details below:

- AFA (2%): US\$ 86.000
- Decreto 1212/03 (7%): US\$ 301.000
- Art. 8 CCT 557/09 (15%): US\$ 645.000_
- Stamp Tax (1.2%): US\$ 51.600
- FAA (0,5%): US\$ 21.500 [...]

Article 6- Other Provisions

Club San Lorenzo declares that no other club or party has the right to claim compensation for the Player other than solidarity contribution. For this matter Club San Lorenzo will supply to Club Al-Ahli a “Proof signed by the former club that there is no TPO of the Player’s economic rights” [...]

Article 8- General

Each of Club San Lorenzo and Club Al-Ahli represents and warrants unconditionally to the other party to this agreement that is full entitled and authorized to sign and execute the terms of this Agreement...”.

12. On 15 August 2018, Al-Ahli did not comply with the payment obligation established for that date in the Third Agreement.
13. On 17 August 2019, San Lorenzo answered the letter of Palestino of 11 August 2018 in the following terms:

“Al respecto le hago saber que el club que represento tiene presente que uds, son titulares del 50% del producido neto de la transferencia de los derechos federativos del mencionado jugador.

Asimismo, pongo en vuestro conocimiento que hemos procedido a transferir el 100% de los derechos federativos al club AL-AHLI SAUDI FOOTBALL CLUB, por un valor de u\$s (Sic) 4.300.000,00.- netos.

En consecuencia, al tiempo que recibamos el pago del precio de transferencia, procederemos a liquidar el 50% que a uds. [sic.] les corresponde”.

Free translated into English as follows:

“In this regard, I let you know that the club I represent is aware that you are the owners of 50% of the net amount of the transfer of the federative rights of the aforementioned player.

Likewise, I inform you that we have proceeded to transfer 100% of the federative rights to AL-AHLI SAUDI FOOTBALL CLUB, for a value of u\$s (Sic) 4,300,000.00.- net.

Consequently, at the time we receive the payment of the transfer price, we will proceed to settle the 50% that corresponds to you”.

14. On 27 August 2018, Palestino sent a letter to San Lorenzo requesting the payment of the percentage in its favour arising out of the Third Agreement, as it considered that in light of the press information received, Al-Ahli had already paid the relevant transfer fee:

“(…) No entendemos la falta de información y de cortesía de su club para con Palestino quien es el dueño del 50% del producto neto de la transferencia de los derechos federativos del jugador, tal cual lo señalan en carta de fecha 17 de agosto enviada a nosotros a través de nuestra Federación.

Dado la información de prensa obtenida, entendemos que ya se realizó el pago de los derechos federativos del jugador al Club San Lorenzo, por lo que solicitamos se traspase a la cuenta corriente de Club Deportivo Palestino el 50% de los recibido por el total de los dineros recibidos por tales derechos del jugador a la siguiente cuenta corriente (...).”

Free translated into English as follows:

“(…) We do not understand the lack of information and courtesy of your club towards Palestino who is the owner of 50% of the net product of the transfer fee regarding the player's federative rights, as indicated in a letter dated August 17 sent to us through our Federation”.

Given the press information obtained, we understand that the payment of the player's federative rights to the

Club San Lorenzo has already been made, and therefore we request that 50% of the total transfer fee received for such federative rights regarding the player is transferred to the following bank account (...)”.

15. On 28 August 2018, San Lorenzo answered this letter as follows:

“San Lorenzo tiene pleno conocimiento del carácter de titular del 50% del producido neto de la transferencia del jugador que ostenta Palestino, [...]”

San Lorenzo dará cumplimiento con la obligación de cancelar el 50% del Producido Neto de la transferencia, una vez percibidas las sumas acordadas con el Club Al-Ahli de Arabia Saudita”.

Free translated into English as follows:

“San Lorenzo is fully aware that Palestino is the owner of 50% of the transfer net product of the player that Palestino is entitled to receive.

[...]”

San Lorenzo will comply with the obligation to pay the 50% of the transfer net product, once it has received the amounts agreed with Al-Ahli Club of Saudi Arabia”.

16. On 3 September 2018, San Lorenzo received from Al-Ahli the amount agreed in the Third Agreement.
17. On 5 September 2018, Palestino sent a last letter to San Lorenzo with the following terms:

“Por encargo del Directorio de Club Deportivo Palestino SADP y en virtud de carta enviada por Club Atlético San Lorenzo de Almagro y firmada por Ud. Con fecha 17 de agosto y reiterada en carta de fecha de 28 de agosto, venimos a solicitar tenga a bien transferir a la brevedad el pago del 50% del producto neto de la transferencia de los derechos federativos del jugador P. Agradeceremos transferir a la brevedad a nuestro club el 50% del total de los dineros recibidos, a la siguiente cuenta corriente (...).

Free translated into English as follows:

“At the request of the Board of Directors of Club Deportivo Palestino SADP and in virtue of a letter signed and sent by Club Atlético San Lorenzo de Almagro on August 17 and reiterated in a letter dated August 28, we request that you transfer promptly the payment of 50% of the net product of the transfer of the federative rights of the player P. We will be grateful if you could transfer 50% of the total transfer amount received to our club as soon as possible, to the following bank account (...).”

III. PROCEEDINGS BEFORE THE FIFA’S PLAYER’S STATUS COMMITTEE.

18. On 13 September 2018, Palestino lodged a claim against San Lorenzo before the Player’s Status Committee of FIFA (“PSC FIFA” or “FIFA”), that was amended on 27 November 2018, requesting *inter alia* the following:

- a) “USD 2.844.789 “which corresponds to 50% of the total transfer fee (USD 5.689.578)”;
 - b) Alternatively, USD 2.229.239, “which corresponds to 50% of USD 4.584.000 (USD 4.300.000 plus USD 284.478 of the solidarity contribution)”;
 - c) Alternatively, USD 2.263.157, “which corresponds to 50% of the total transfer fee (USD 4.526.315)”;
 - d) As a final alternative, USD 2.150.000, “which correspond to 50% of USD 4.300.000”;
 - e) 5% interest “since the date in which the payment became due”;
 - f) That the Respondent pay all the procedural costs and reimburse the advance of costs to the Claimant”.
19. On 29 October 2019, the PSC FIFA issued its decision in the above dispute (hereinafter the “Appealed Decision”) in the following terms:

“Decision of the Single Judge of the Player’s Status Committee:

1. *The claim of the Claimant, Deportivo Palestino, is partially accepted.*
2. *The Respondent, San Lorenzo de Almagro, has to pay to the Claimant the amount of USD 2.702.550, plus interest at the rate of 5% p.a. as from 16 August 2018 until the date of effective payment.*
3. *The Claimant is directed to inform the Respondent, immediately and directly, of the relevant bank account to which the Respondent must pay the amount mentioned under point III/2. (...)*
4. *The Respondent shall provide evidence of payment of the due amount in accordance with point III/2. to FIFA to the e-mail address psdfifa@fifa.org, duly translated, if need be, into one of the official FIFA languages (English, French, German, Spanish).*
5. *In the event that the amount due plus interest in accordance with point III/2. Above is not paid by the Respondent within 45 days as from the notification by the Claimant of the relevant bank details to the Respondent, the Respondent 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 (cf. art. 24bis of the Regulations on the Status and Transfer of Players).*
6. *The ban mentioned in point III/5. above will be lifted immediately and prior to its complete serving, once the due amount is paid.*
7. *In the event that the aforementioned sum plus interest 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 FIFA’s Disciplinary Committee for consideration and a formal decision.*
8. *The final costs of the proceedings in the amount of CHF 25,000 are to be paid, within 45 days as*

from the date of notification of this decision, as follows:

8.1 The amount of CHF 20,000 has to be paid by the Respondent to FIFA to the following bank account with reference to case nr. 18-01903/osr: [...]

8.2 The amount of CHF 5,000 has to be paid by the Claimant. Taking into account that the latter has already paid the amount of CHF 5,000 as advance of costs at the beginning of the present procedure, the Claimant is exempted to pay said amount to FIFA.

9. In the event that the aforementioned amount of costs is not paid within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision".

20. On 17 February 2020, the PSC notified to the parties the grounds of the Appealed Decision, which can be summarized as follows:

- It cannot be understood which is the contractual basis of Palestino to claim against San Lorenzo, taking into consideration that Palestino was not a party in the Second Agreement and thus could not claim any entitlements on the basis of an agreement to which it was not a party and could not claim against a party with which it had no contractual arrangements.
- However, it is worth noting the reply of San Lorenzo, in which it stated that it would pay the corresponding amount to Palestino once it had received the transfer fee owed by Al-Ahli. The Single Judge considered undisputed that there was an amount due to Palestino as it was expressly recognized by San Lorenzo of 17 August 2018.
- Therefore, the PSC recalled that San Lorenzo unequivocally recognised its obligation to pay to Palestino 50% of the transfer fee that had to be obtained due to Third Agreement signed between San Lorenzo and Al-Ahli.
- Regarding the amount that Palestino should receive, the PSC recalled that Al-Ahli committed itself to pay to San Lorenzo a transfer fee of UDS 4.300.000 plus USD 1.105.100 as "taxes". Hence, the PSC understood that the total transfer fee relating the Third Agreement was USD 5.405.100 as it was also the amount uploaded to the Transfer Matching System.
- Finally, the PSC decided not to deduce from the transfer amount (USD 5.405.100) the value corresponding to the solidarity mechanism because this payment was made unilaterally by Al-Ahli and San Lorenzo never received it.
- The PSC determined that the Respondent obtained the total amount of USD 5,405,100 from Al-Ahli. Therefore, and taking into consideration that the Respondent acknowledged that the Claimant is entitled to 50% of the transfer fee, the Single Judge concluded that the Claimant is entitled to the amount of USD 2,702,550. plus 5% p.a. from 16 August 2018 until the date of effective payment.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

21. On 9 March 2020, pursuant to Articles R47 and R48 of the Code of Sports-related Arbitration (hereinafter, the “CAS Code”), San Lorenzo filed its Statement of Appeal before the Court of Arbitration for Sport (hereinafter, the “CAS”) against the Respondent with respect to the Appealed Decision. The Appellant requested the present case be submitted to a sole arbitrator.
22. On 19 March 2020, San Lorenzo submitted its Appeal Brief, pursuant to Article R51 of the Code, with the following request for relief:

“...

- a) To revoke the decision of the FIFA Single Judge of the Players’ Status Committee.*
 - b) To modify the amount recognized in favour of PALESTINO, and calculate it according to the net transfer fee of the SECOND TRANSFER (USD\$4.300.000), this is, the amount of USD 2.150.000.*
 - c) In any case, to allocate to the Respondent the costs of this procedure, the procedure before FIFA and a contribution of CHF 15.000.- towards the Appellant’s costs and legal fees”.*
23. On 19 March 2020, the Respondent informed CAS that it did not agree to submit the present matter to a Sole Arbitrator and therefore requested that the Appeal be submitted to a Panel of three arbitrators.
 24. On 23 March 2020, the CAS Court Office, considering that the Appellant had not submitted any reason to justify its request for a sole arbitrator and the amount in dispute, decided to submit the matter to a three-member Panel.
 25. On 26 March 2020, the Appellant nominated Mr. Mariano Clariá as arbitrator.
 26. On 6 April 2020, the Respondent nominated Prof. Ulrich Haas as arbitrator.
 27. On 19 May 2020, pursuant to Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to settle the present dispute would be composed of the following:

President: Mr. José Juan Pintó Sala, attorney-at-law, Barcelona, Spain

Arbitrators: Mr. Mariano Clariá, attorney-at-law, Buenos Aires, Argentina

Mr. Ulrich Haas, professor, Zurich, Switzerland

28. On 8 June 2020, the Respondent filed its answer to the Appeal, in accordance with Article R55 of the CAS Code, with the following requests for relief:

- a) *“Fully dismiss the Appeal filed by Club Atlético San Lorenzo de Almagro, upholding the decision of FIFA in its entirety.*
 - b) *Condemn Club Atlético San Lorenzo de Almagro to pay CHF 15.000 for the legal expenses of Club Deportivo Palestino SADP, as well as all the expenses eventually incurred during these procedures, and finally, paying the totality of the costs”.*
29. On 7 October 2020, the Panel, after having consulted the parties, pursuant to Articles R57 and R 44.2 of the CAS Code, decided to hold a hearing by video-conference.
30. On 14 October 2020, the CAS Court Office, on behalf of the Panel and in view of the availability of the Parties on the proposed date, called the Parties and their witnesses to appear at the hearing that would be held by video-conference (Via Cisco Webex) on 24 November 2020 at 15h00 (CET).
31. On 14 October 2020, the CAS Court Office forwarded to the Parties the Order of Procedure, which was duly signed by them.
32. On 24 November 2020, a hearing was held by video-conference (Via Cisco Webex). At the outset of the hearing both parties confirmed that they had no objection as to the constitution of the Panel.
33. In addition to the Panel and Mr. Antonio De Quesada, CAS Head of Arbitration, the following persons attended the hearing:
- a) For the Appellant: Mr. Juan Ramilo & Mr. Diego María Lennon, legal counsels.
 - b) For the Respondent: Mr. Eduardo Carlezzo, Mr. Javier Gasman, Mr. Rodrigo Marrubia Pereira and Mr. Eduardo Diamante Teixeira de Sousa, legal counsels.
34. At the hearing, the parties had the opportunity to present their case, to submit their arguments and to comment on the issues and questions raised by the counterparty. At the closing of the hearing, the Parties expressly stated that they did not have any objections with regard to the procedure. The Parties further confirmed that they were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Panel and that their right to be heard had been respected.

V. SUMMARY OF THE PARTIES’ SUBMISSIONS

35. The following summary of the parties’ positions is illustrative only and does not necessarily comprise each and every contention put forward by the parties. The Sole Arbitrator, however, has carefully considered, for the purposes of the legal analysis which follows, all the submissions made by the parties, even if there is no specific reference to those submissions in the following summary.

A. The Appellant

36. The Second Agreement was signed only between San Lorenzo, Colo Colo and the Player and therefore was never signed by Palestino, who seems to be a third party in said agreement.
37. San Lorenzo never participated in the First Transfer Agreement and therefore was completely unaware of its exact wording. San Lorenzo has seen for the first time said contract in these proceedings.
38. However, it is undisputed that in the Second Agreement, the economic rights of Palestino over the Player were recognized as it is specifically established that the Chilean club is the former owner of 50% of the economic rights of the Player.
39. It was Colo Colo the only party that had an agreement with Palestino and the one who declared in the Second Agreement that Palestino owned 50% of the economic rights of the Player, and therefore was the only entitled party that had to protect those third-party rights. San Lorenzo had no direct obligation regarding the protection of the Palestino economic rights as it is Colo Colo, that has not been called to these proceedings, the one that is bound by the agreement signed with Palestino.
40. The federative and economic rights of the Player were transferred for USD 4.300.000 (net amount) plus taxes, which means that they were transferred by the gross sum of USD 5.405.100. The second clause of the Third Agreement establishes the following:

“Club Al-Ahli shall pay (...), as Transfer fee, the amount of US\$ 4.300.000 (...), plus the amount of US\$ 1.105.100 (...) as Taxes according to the details below:

(i) AFA (2%): USD 86.000.

(ii) Decreto 1212/03 (7%): USD 301.000.

(iii) Art. 8 CCT 557/09 (15%): USD 645.000.

(iv) Stamp Tax (1.2%): USD 51.600.

(v) FAA (0.5%): USD 21.500”.
41. Additionally, in the third clause of the Third Agreement it was stipulated that the solidarity contribution was not included in the transfer fee.
42. The Second Transfer states, with no doubt, that the effective sum that San Lorenzo was going to receive was of USD 4.300.000, and the sum of USD 1.105.100 was meant to cancel different taxes an operational cost that were to be borne by Al-Ahli.
43. The transfer of players has different associated costs amongst the different countries, and in some jurisdictions, in order to release the International Transfer Certificate, it is mandatory to pay some taxes or operational costs involving the transfer. In Argentina, the payment of said

taxes comprise the percentage in favour of the player (15%) established in Art. 8 of the Collective Bargaining Agreement 557/09 related to professional football players, the percentage in favour of the players Union (0,5%), a percentage for the football federation (AFA) (2%), a percentage for national taxes (7%), and another percentage for local stamp taxes (1,2%). These taxes sum up in the present case USD 1.105.100, as it was established in the Third Agreement. Therefore, the transfer fee received by the Appellant was USD 4.300.000 and not USD 5.405.100 as concluded by FIFA.

44. The Appealed Decision did not take into consideration the agreements reached between San Lorenzo and Colo Colo regarding the transfer of the Player and impose obligations over San Lorenzo without any contractual or legal basis.
45. Although the Single Judge starts by indicating that it failed to understand what the contractual basis was for such claim filed by Palestino as it was not a party to the Agreement signed by Colo Colo and the Respondent, it carefully chooses a sentence used by San Lorenzo in its communication of 17 August 2018 to order this club to pay.
46. When analysing the sentence where San Lorenzo states that it *“would pay the corresponding amounts once it had received the transfer amount”* it should also be taken into account the context of said sentence and especially that in that same communication, it is clearly stated that San Lorenzo had transferred the player to Al-Ahli for the sum of USD 4.300.000 net.
47. It is undisputed by San Lorenzo that it owes 50% of the transfer fee received to Palestino but it should also be undisputed that the transfer fee has to be calculated in net sums and not in gross amount as it is established by FIFA and requested by the Respondent. San Lorenzo only received the amount of USD 4.300.000 and it is from that amount that the owed amount to Palestino shall be detracted.
48. The Single Judge sustains that San Lorenzo has to pay the 50% of the gross amount as it considers proven by the communication of August 17, 2018 that San Lorenzo agreed to pay the corresponding amounts when it received the transfer fee. Such communication clearly states that San Lorenzo transferred the player to Al-Ahli for the sum of USD 4.300.000 net and therefore that once this net payment was received it would pay the corresponding amounts to Palestino.
49. San Lorenzo, by accepting that it would pay to Palestino the corresponding amounts once it receives the transfer fee, is by no means accepting that such amounts shall be calculated from the gross amount of the transfer as the Single Judge concludes. There is no communication whatsoever in which San Lorenzo accepts to calculate Palestino’s part from the gross amount and the Single Judge erred to conclude in such way. The reality is that San Lorenzo was always referring to the net amount received as transfer fee by Al-Ahli and never to the gross amount, as more than 20% of it was to be paid directly to different Argentinian institutions and never really entered San Lorenzo’s accounts.

50. It does not seem reasonable that the Single Judge extracts a piece of communication sent in order to determine that San Lorenzo recognized that it owes the 50% of the transfer fee, but does not even mention that such recognition was over the net sums agreed by the parties.
51. San Lorenzo recognizes owing the Economic Rights of the Player that belong to Palestino, but there is no legal basis to sustain that such amount should be calculated contradicting what San Lorenzo agreed and signed.
52. What the Panel has to analyse is why Palestino never claimed against Colo Colo when they transferred the player to San Lorenzo or even when the player was transferred by San Lorenzo to Al-Ahli if the Third Transfer Agreement does not reflect what Palestino and Colo Colo agreed. In any case it would be Colo Colo the one who breached the contract and not San Lorenzo, that complied with what was established in the Third Transfer Agreement and in the Second Transfer Agreement.
53. The Single Judge never considered the facts in order to issue a reasonable decision. It cannot be analyzed the amounts paid by Al-Ahli without taking into account what the Parties had agreed in the Third Agreement or in the Second Agreement, because those are the only agreements in which San Lorenzo was a party to and was obliged in reference to the transfer of the Player.
54. Taking into account the Appealed Decision, it seems that the principle of *pacta sunt servanda* does not apply in this case because San Lorenzo was condemned without legal or contractual basis since it does not exist any obligation whatsoever that states that the amount has to be calculated from the gross amount, and indeed what San Lorenzo agreed in the Third Agreement is the opposite of what has been interpreted by the Single Judge.
55. In light of all the above the Appellant filed the following prayers for relief:
 - a) To revoke the decision of the FIFA Single Judge of the Players' Status Committee.
 - b) To modify the amount recognized in favor of Palestino, and calculate it according to the net transfer fee of the Second Transfer (USD 4.300.000), this is, the amount USD 2.150.000.
 - c) In any case, to allocate to the Respondent the costs of this procedure, the procedure before FIFA and a contribution of CHF 15.000 towards the appellant's cost and legal fees.

B. Palestino

56. San Lorenzo has acted in bad faith against Palestino repeatedly throughout the present case.

i. Several attempts to circumvent the Respondent's rights

57. The first bad faith behavior of the Appellant towards the Claimant was the malicious attempt to acquire the Respondent's 50% share of the Player's economic rights just a few months before the subsequent transfer of the Player.
58. San Lorenzo, on 14 March 2018, tried to mislead Palestino by offering them the amount of USD 1,250,000 for the acquisition of the 50% of its economic rights of the Player, knowing that this was less than half the amount that Palestino would be entitled to receive a few months later.
59. After the transfer of the Player to Al-Ahli, the Appellant avoided answering the communications received from the Respondent and did not provide any kind of accurate information regarding the transfer of the Player or neither provided a copy of the Third transfer agreement.
60. The CAS jurisprudence is clear in the sense that the selling club has the obligation to inform the other club about the terms and conditions of the subsequent transfer. San Lorenzo did not comply with this principle of good faith established by CAS jurisprudence and furthermore tried to mislead not only the Respondent but also FIFA in the FIFA proceeding by alleging that the solidarity contribution had to be discounted from the amount due to the Respondent when the Third Agreement clearly stated that the price paid by Al-Ahli was net and did not include any solidarity contribution.
61. Another clear element of bad faith lies on the fact that San Lorenzo tries to justify its failure to pay the amount due in light of a supposed intransigence and insistence of Palestino in receiving the 50% over the total transfer fee. In this regard it has to be taken into account that if the Appellant had acted in good faith and with willingness to make the payment, it could have at least paid the amount allegedly due (USD 2,150,000) and afterwards defend its position regarding the residual amount.
62. It shall be also noted that the Appellant argues that it did receive the payment from Al-Ahli by the time of the communications sent by the Respondent and that this is the reason why it was not possible to make the payment. The reality is that Al-Ahli paid to the Appellant on 3 September 2018, that is to say 2 days before the last amicable letter sent by the Respondent to the Appellant and 10 days before the filing of the claim before FIFA. San Lorenzo had the opportunity to pay the amount due or at least to inform the Respondent that it had already received the payment from Al-Ahli and that it would proceed to make the payment to Palestino but it remained silent and did not make the payment voluntarily.

ii. The Appellant was fully aware of the Respondent's rights

63. The Appellant was fully aware of the terms of the First Transfer agreement as it is verified in Article 5 of the Second Agreement in which Colo Colo duly informed San Lorenzo that Palestino was the owner of the 50% of the economic rights. Therefore, it has to be concluded that San Lorenzo was aware of the conditions of the First Agreement.

64. The Appellant is trying to circumvent the Respondents rights and tries to make this case look complex and confusing. The truth is, however, that the facts are simple: the Appellant received a transfer fee of USD 5,405,100 from Al-Ahli and the Respondent is entitled to receive the 50% of this amount, i.e. USD 2,702,550.

iii. The Respondent is entitled to receive 50% of the Gross Amount

65. It is undisputed that the total transfer fee received by San Lorenzo from Al-Ahli for the transfer of the player P. amounted USD 5,405,100 and that said amount was completely paid on 3 September 2018 as FIFA concluded in the Appealed Decision once it had full access to the documents inserted by the parties into the FIFA TMS.
66. It is crystal clear and uncontroversial that (i) San Lorenzo received the total transfer fee of USD 5,405,100 and (ii) that Palestino has the right to receive the 50% of the transfer fee received by San Lorenzo.
67. In the Appealed Decision, the Single Judge considered that San Lorenzo unequivocally recognized that it was obliged to pay Palestino 50% of the amount obtained from the transfer of the Player from San Lorenzo to Al-Ahli. Furthermore, it is important to stress that the clauses do not mention that the Respondent is entitled to receive 50% of the net amount.
68. Although San Lorenzo was aware of the rights held by Palestino, it decided to modify and suppress Palestino's rights by including clause 7.1 in the Second Agreement, that expressly states that San Lorenzo was obliged to pay the 50% of the net amount received. This modification of the rights of Palestino is not only abusive because it suppresses rights of a third party that is not part of the contract, but also illegal and, consequently, null and void.
69. In the fourth preamble of the Second Agreement, Colo Colo and San Lorenzo expressly declared that Palestino would be the holder of the remaining 50% of the Player's economic rights and that those rights were not in any manner object of the contract. It shall be crystal clear that if the Respondent's share was not object of the Second Agreement in any manner, it is not possible to modify its content.
70. Pursuant to the First Agreement, Palestino was entitled to receive 50% of the total transfer fee of the Player, without establishing any type of limitation or deduction whatsoever.
71. The Appellant tried to illegally suppress the Respondent's rights and therefore the only possible conclusion that can be reached is that Palestino is indeed entitled to receive the 50% of the gross amount received by San Lorenzo in accordance to what was established and agreed by Palestino and Colo Colo in the First Agreement and that could not be modified by the Second Agreement.
72. FIFA concluded that San Lorenzo unequivocally recognized that it had to pay Palestino 50% of the transfer fee obtained from the transfer of the player to Al-Ahli. In this sense, considering that the transfer fee was USD 5.405.100 as was established in the Third Agreement and included

in the FIFA TMS, FIFA correctly concluded that Palestino was entitled to receive 50% of such transfer fee, that is to say, USD 2.702.550.

73. In accordance with art. 112 of the Swiss Code of Obligations (“CO”), Palestino has always been in a position to claim the amounts owed based on the Second Agreement despite not having been a party to this contract.
74. Considering art. 20 of the Swiss Code of Obligations and the conduct of the parties, it shall be concluded that clause 7 of the Second Agreement is illegal and consequently null and void, as it suppresses the right of a third party, and cannot be unilaterally included by San Lorenzo in the Second Agreement.
75. It has been duly demonstrated that the Respondent is entitled to receive 50 % of the total amount received by the Appellant from Al-Ahli, as Palestino cannot have its rights jeopardized by clauses unilaterally and illegally included by San Lorenzo in a malicious manner.
76. Having proven that San Lorenzo received the Amount of USD 5,405,100 from Al-Ahli, and as correctly established in the Appealed Decision, Palestino is entitled to receive 50% of the total amount of the transfer fee, i.e., USD 2,702,550.

VI. JURISDICTION

77. Article R47 of the CAS Code provides as follows;

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned”.

78. The jurisdiction of the CAS, which has not been disputed by the parties, arises out of Articles 57 and 58 of the FIFA Statutes which in the pertinent part reads as follows:

“Article 57:

1. FIFA recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents....

Article 58:

1. Appeals 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 notification of the decision in question.

2. Recourse may only be made to CAS after all other internal channels have been exhausted...”.

79. The Panel notes that the Appealed Decision has been issued by a FIFA legal body, that Article 58 of the FIFA Statutes provides that CAS has jurisdiction to resolve appeals against final decisions passed by FIFA’s legal bodies and that all the prior legal remedies available to the Appellant have been exhausted, so the general conditions for the CAS to have jurisdiction in accordance with Article R47 of the CAS Code are met.
80. In addition, the jurisdiction of CAS in the present matter is further confirmed by the Order of Procedure duly signed by the Parties.
81. It follows that CAS has jurisdiction to decide on the present dispute.
82. In application of Article R57 of the Code and in line with the consistent jurisprudence of the CAS, the Panel has full power to review the facts and the law of the case. The Panel, therefore, deals with the present case *de novo*, evaluating all facts and legal issues involved in the dispute.

VII. ADMISSIBILITY

83. Pursuant to Article 58, paragraph 1 of the FIFA Statutes, in connection with Article R49 of the CAS Code, the Appellant had 21 days from the notification of the Appealed Decision to file its Statement of Appeal before CAS.
84. The grounds of the Appealed Decision were communicated to the Appellant on 17 February 2020. Its Statement of Appeal was filed on 9 March 2020, and therefore was filed within the deadline of 21 days set by Article 58 para 1 of the FIFA Statutes. The Appeal Brief was also filed within the time limit stipulated by Article R51 of the CAS Code.
85. Consequently, the present appeal is admissible.

VIII. APPLICABLE LAW

86. Article R58 of the CAS Code reads 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

87. In addition, Article. 57, par.2 of the FIFA Statutes establishes 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”.

88. Therefore, the Panel considers that the present dispute shall be resolved on the basis of the applicable FIFA Regulations and, subsidiarily, based on Swiss Law. In addition, both parties at the hearing explicitly agreed that Swiss Law shall apply to the interpretation of the Transfer Agreement.

IX. MERITS

89. The present Appeal has been filed against a decision issued on 29 October 2019 by the Single Judge of the FIFA Players' Status Committee which partially accepted Palestino's Claim and imposed San Lorenzo the obligation to pay the amount of USD 2,702,550, plus interest at the rate of 5% *p.a.* as from 16 August 2018 until the date of effective payment.
90. The Panel notes that in the Appealed Decision, the Single Judge of the Player's Status Committee considered that San Lorenzo effectively transferred the Player to Al-Ahli for the total amount of USD 5,405,100, and on that basis, concluded that Palestino shall receive the amount of USD 2,702,550 (50% of such total amount).
91. The Panel shall firstly conclude that being undisputed that Palestino shall receive certain amounts with regards to the transfer of the Player to Al-Ahli (San Lorenzo has so repeatedly admitted), the focus of the discussion lies on the specific amount that is due to Palestino. In light of the above, the Panel finds it thus irrelevant to enter into considerations as to the bad faith of San Lorenzo as claimed by the Respondent. In other words, the sole discrepancy between the parties resides in whether the referred 50% shall be calculated taking into account the "gross" (transfer fee + taxes) or the "net" (transfer fee) amount of the transfer.
92. From the factual background explained above the Panel firstly notes that on 26 May 2015, Palestino, owner of 100% of the federative and economic rights of the Player, entered into a transfer agreement with Blanco y Negro S.A. Club Deportivo Colo-Colo, who acquired 100% of the federative rights and 50% of the economic rights of the Player. In light of what was established in Clauses 1.2, 1.3, 2.1 and 3.1 of the First Agreement, the Panel considers undisputed that Palestino retained 50% of the economic rights of the Player.
93. Both parties agreed on including a Sell-on fee clause in accordance to which, if Colo Colo received an offer to purchase 100% of the player's federative and economic rights equal to, or greater than, USD 5,000,000 it would be obliged to accept such an offer and transfer the Player and both Clubs would receive 50% of the transfer fee agreed.
94. Concerning this First Agreement, the Panel wishes to emphasize that there was no specific reference to the basis of the calculation of the 50% of the economic rights.
95. The Panel also notes that on 11 February 2016, Colo Colo and San Lorenzo signed the Second Agreement. As it can be observed from the preamble and several clauses of this agreement, Colo Colo informed San Lorenzo of Palestino's ownership of the remaining 50% of the economic rights of the Player and San Lorenzo undertook to recognize Palestino's rights and proceed accordingly if it decided to transfer the Player to any third club.

96. The Panel continues its analysis by pointing out that on 11 August 2018, San Lorenzo and Al-Ahli signed a transfer agreement of 100% of the federative and economic rights of the Player. This Third Agreement provides for a fixed transfer fee by virtue of which Al-Ahli agreed to pay to the Appellant USD 4.300.000 plus the amount of USD 1.105.100 as taxes.
97. This being said, for the resolution of the dispute, the Panel must examine not only what is established in the different agreements, but also the subsequent events and conducts of both parties, all of which has generated, in the Panel's opinion, some sort of atypical and unique situation that, as we will see, affects the resolution of the controversy.
98. As a matter of fact, the Panel shall take into account that the transfer of the Player to Al-Ahli was made from an Argentinian professional football club with its registered office in Buenos Aires, Argentina and affiliated to the AFA. It is important to contextualize this transaction, as the transfers of football players in Argentina are subject to several operational costs consisting of different taxes that must be satisfied to several Argentinian bodies in order for the AFA to issue the ITC. In the case at stake, those taxes amounted in approximately 25% of the transfer total amount agreed by the parties.
99. The Third Agreement somehow reflects this structure, as the parties agreed on a transfer fee plus taxes (clause 2.1):

"2.1 Club Al-Ahli shall pay to Club San Lorenzo, as Transfer Fee, the amount of US\$ 4.300.000 (four million three hundred thousand U.S. Dollars), plus the amount of US\$ 1.105.100 (one million one hundred five thousand one hundred U.S. Dollars) as Taxes according to the details below:

 - AFA (2%): US\$ 86.000
 - Decreto 1212/03 (7%): US\$ 301.000
 - Art. 8 CCT 557/09 (15%): US\$ 645.000
 - Stamp Tax (1.2%): US\$ 51.600
 - FAA (0,5%): US\$ 21.500".
100. In the scenario described, the Panel shall analyse, for this specific case and in light of the particular events occurred, if all the operational costs of this transfer have to be considered as part of the basis over which the percentage owed to Palestino has to be calculated or if on the contrary, the calculation shall be done over the basis of the transfer fee only, without considering the operational costs. The Panel has already noticed that there is no specific provision in the First Agreement signed by the Respondent that resolves the controversial situation created in these proceedings, and although in the Second Agreement it is stated, in article 7, that all the calculations have to be done taking into account the net amount and a definition of net amount is included therein, the Panel agrees with the Respondent that its rights cannot be affected by the Second Agreement as the Respondent is not a party to it.

101. In its task of research of the real intent of the parties on the conflicting points raised in these proceedings, the Panel has analyzed the correspondence exchanged between San Lorenzo and Palestino.
102. The Panel shall stress that on 17 August 2018, the Appellant communicated for the first time to the Respondent that it had agreed on the transfer of the Player to Al-Ahli and that it acknowledged that the Respondent was the owner of the 50% of the economic rights and that it would transfer its corresponding part once Al-Ahli had paid the referred amount. In this first communication, the Appellant informed the Respondent that the transfer fee agreed by the parties to the Third Transfer Agreement was USD 4.300.000. The Appellant refers in the mentioned letter that it acknowledges that Palestino is the legitimate owner of the 50% of the net transfer fee regarding the federative rights of the Player.
103. The Respondent answered on 27 August 2018 to the abovementioned letter sent by San Lorenzo, and in said response it expressly acknowledged, confirmed and agreed that Palestino was the effective owner of 50% of the “*producto neto*” (net product) of the transaction:

“(...) No entendemos la falta de información y de cortesía de su club para con Palestino quien es el dueño del 50% del producto neto de la transferencia de los derechos federativos del jugador, tal cual lo señalan en carta de fecha 17 de agosto enviada a nosotros a través de nuestra Federación”.

Free translated into English as follows:

“(...) We do not understand the lack of information and courtesy of your club towards Palestino who is the owner of 50% of the net product of the transfer fee regarding the player's federative rights, as indicated in a letter dated August 17 sent to us through our Federation”.

104. On 5 September 2018 the Respondent, once again, requested the payment of 50% of the “*producto neto*” (net product) of the transfer of the Player:

“Por encargo del Directorio de Club Deportivo Palestino SADP y en virtud de carta enviada por Club Atlético San Lorenzo de Almagro y firmada por Ud. Con fecha 17 de agosto y reiterada en carta de fecha de 28 de agosto, venimos a solicitar tenga a bien transferir a la brevedad el pago del 50% del producto neto de la transferencia de los derechos federativos del jugador P. Agradeceremos transferir a la brevedad a nuestro club el 50% del total de los dineros recibidos, a la siguiente cuenta corriente (...)”.

Free translated into English as follows:

“At the request of the Board of Directors of Club Deportivo Palestino SADP and in virtue of a letter signed and sent by Club Atlético San Lorenzo de Almagro on August 17 and reiterated in a letter dated August 28, we request that you transfer promptly the payment of 50% of the net product of the transfer fee regarding the federative rights of the player P. We would be grateful if you could transfer 50% of the total transfer amount received to our club as soon as possible, to the following bank account (...)”.

105. From the abovementioned letters sent by the Appellant, the Panel deems it relevant to analyze, taking into account the particularities of the present case, in first place, what the Parties real

intention was when referring to “producto neto” (net product) and secondly what is the standing practice in CAS when referring to net amount.

106. When the mutually agreed intention of the parties cannot be established, the real intention of the parties has to be analyzed according to the requirements of the good faith (ATF 129 III 664; 128 III 419 consid. 2.2. p. 422). Therefore, the Panel shall seek how a declaration of the external manifestation of a party could have been reasonably understood dependent upon the individual circumstances of the case (ATF 129 III 118 consid. 2.5 p. 122; 128 III 419 consid. 2.2 p. 422). The emphasis therefore has to be not so much on what a party may have meant but on how a reasonable man would have understood his declaration (ATF 129 III 118 consid. 2.4. p. 122; 128 III 419 consid. 2.2. P.422). According to the above and in light with what the CAS panel in the case CAS 2007/A/1219 stated, the Panel considers that when trying to determine the intent of a party or the intent that a reasonable person would have had in the same circumstances, it is necessary to analyze firstly the actual wording used by the parties.
107. The Panel wishes to highlight the fact that both Parties in the present proceedings are Spanish native speakers and that the referred letters were all sent in Spanish. Therefore, and with the intention of trying to understand what the Parties intended by referring to “producto neto” (net product), and although the present proceedings have been conducted in English, the Panel considers it relevant to analyze the definition given to the term “neto” (net) in the official Royal Spanish Academy’s Dictionary.
108. In light of the above, the Royal Spanish Academy’s Dictionary states the following:

“NETO:

*Que resulta liquido en cuenta, después de comparar el cargo con la data, o en el precio, **después de deducir los gastos**”.*

Free translated into English as follows:

“NET:

*Which is liquid in account, after comparing the charge with the data, or in the price, **after deducting the expenses**”.*
109. From the above definition, the Panel notes that the term “neto” (net) in Spanish refers to the final liquid amount once the expenses (with no exclusion) have been already deducted. Therefore, it seems logical to believe that when the parties were referring to the term “producto neto” (net product) in Spanish they were intending to refer to the final amount received by San Lorenzo after deducting all the expenses or operational costs related to the transaction. The Panel has to consider that if the Respondent was really intending to give a different definition to the term “producto neto” (net product) deviating from the academic definition of the term it would have specifically referred to it in the transcribed letters.
110. Regarding the above, it shall be also noted that the terms “gross” and “net” are two opposite concepts so the Panel does not consider reliable to consider that when the Respondent in two

occasions, when claiming the payment of an outstanding amount, expressly referred to “producto neto” (net product), it was actually referring to the gross amount of the transaction. It seems at least reasonable, in the understanding of the Panel, to conclude that when the Respondent, being a native Spanish speaker, was referring to said concept, its real intention was to refer to the final amount received by the Appellant once all the operational costs of the transaction were deducted.

111. In addition of the above, the Panel also wishes to underline what the CAS jurisprudence has considered regarding the concept of “net amount”. In this regard, it is worth noting that CAS has confirmed in several occasions that the term “net amount” shall refer to the final amount the creditor expects to receive in its bank account and therefore that the proper interpretation of said term has to be understood to be “without any deduction” in the sense that the agreed net amount must exactly correspond to the amount which finally is maintained by the creditor (see CAS 2012/A/2806 and CAS 2006/A/1018). Therefore, it is a common understanding in the practice of sports contracts that a “net amount” refers to the final amount the creditor expects to receive in its bank account once all the different taxes, charges, expenses or all sort of operational costs regardless if they are due to any official tax authorities or any third parties.
112. This abovementioned criterion was also followed in CAS 2005/A/896 when the Panel considered that the word “net fee” could only refer to the net transfer fee paid for the acquisition of the player after the deduction of the costs in direct connection with the transfer. The Panel thus considers that the abovementioned transcribed communications together with the definition given by the Royal Spanish Academy and the interpretation done by CAS jurisprudence of the term “net” implies that the Panel has to consider that the calculation of 50% shall be made on the transfer fee (USD 4.300.000) and not on the transfer fee + associated taxes as resolved in the Appealed Decision. It is not only that the Appellant always made a clear distinction between the economic compensation of the transfer and its operative costs, but also that the Respondent confirmed this rationale in several letters sent to San Lorenzo, in which reference is made to the “*producto neto*” (net product). What the parties informed in FIFA TMS about the transfer and its value has, in the Panel’s view, less probatory value than the express acknowledgement, made by the creditor in several correspondence, on which is the amount that shall be payable to it.
113. The Panel shall refer to the principle of *venire contra factum proprium*. This principle provides that when a conduct of one party has led to raise legitimate expectations on the second party, the first party is barred from changing its course of action to the detriment of the second party as it has been widely confirmed by plenty of CAS awards (CAS 2006/A/1189, CAS 2006/A/1086, CAS 98/200 among others).
114. Said principle has also been extensively analyzed by the Swiss Federal Tribunal that has concluded in several occasions that a party violates the principle of *venire contra factum proprium* if it has induced the other party (through its previous behaviour) to legitimately rely on certain assumptions. In the present case, the Panel finds that there are elements that could constitute a breach of the above principle.

115. Therefore, the Panel deems it proven that the parties' real intent, in light of their conduct and the exchange of letters that took place between them, was that the basis for the calculation of the 50% in favour of Palestino was the transfer fee only.
116. The Panel also wishes to highlight that considering what it is established in the third Transfer Agreement signed between San Lorenzo and Al Ahli, it was the Saudi Arabian Club the party that had to bear all the operational costs arising from the transfer. In this regard, it can be concluded from the referred Agreement that the effective transfer fee that San Lorenzo was going to receive was USD 4.300.000 as this is the tax base of the deal and the percentages regarding the different operational costs related to the transfer were calculated from this amount.
117. If the Panel was to conclude that the calculation of the 50% corresponding to the Respondent was to be done from the gross amount of the transaction and taking into account that Al Ahli seems to be the party bearing the payment of the different operational costs, the overall result of the transaction would be that both the Appellant and the Respondent would finally receive a significantly different amount due to the transfer of the Player despite having the exact same rights over him. Therefore, the Panel considers that the most just and equitable solution to the controversy generated is to conclude that the division of the economic rights has to be done over the net amount of the operation.
118. In light of all the above, the Panel decides to uphold the appeal and that the amount payable by San Lorenzo to Palestino shall be USD 2.150.000 (50% of USD 4.300.000) instead of the amount granted in the Appealed Decision, plus 5% interest as from 16 August 2018 until the date of effective payment as established in the Appealed Decision.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Club Atlético San Lorenzo de Almagro against the decision rendered by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association (FIFA) on 29 October 2019 is upheld.
2. The decision of the Single Judge of the FIFA Players' Status Committee rendered on 29 October 2019 is confirmed, with the exception of point 2 of its operative part, which is modified as follows:

II. The Respondent, San Lorenzo de Almagro, has to pay to the Claimant the amount of USD 2.150.000, plus interest at the rate of 5% p.a. as from 16 August 2018 until the date of effective payment.

3. (...).
4. (...).
5. All other or further motions or prayers for relief are dismissed.