Arbitration CAS 2017/A/5455 Sporting Lokeren Oost-Vlaanderen v. Clube Atlético Monte Azul, award of 10 September 2018

Panel: Prof. Luigi Fumagalli (Italy), President; Mr Bernard Hanotiau (Belgium); Mr Stefan Geir Thorisson (Iceland)

Football
Transfer fee due following the transfer of a player on loan
Absence of withdrawal of the appeal due to the payment of the advance of costs by the Appellant
Time of "entry into force" of the obligation of a debtor club to pay the transfer fee due to the creditor club

1. **If the Appellant paid the total amount of the advance of costs in the time limit fixed by the CAS following the Respondent's failure to pay its share and pursuant to a request sent to the Appellant thereafter, as a result, according to Article 64.2 of the CAS Code dealing with the advance of costs, the appeal cannot be deemed withdrawn and the arbitration terminated.**

2. **Based on the interpretation of an applicable loan agreement, the obligation of a debtor club to pay a creditor club its share of the transfer fee due for the transfer of a loaned player to a third club is not due before the receipt by the debtor club of the instalments due by the third club.**

I. THE PARTIES

1. Sporting Lokeren Oost-Vlaanderen is a professional football club with registered office in Lokeren, Belgium (the "Appellant" or "Lokeren"). The Appellant is affiliated to the Belgian Football Federation (*Union Royale Belge des Sociétés de Football-Association* - "URBSFA"), which is a member of Fédération International de Football Association ("FIFA"), the world governing body of international football.

2. Clube Atlético Monte Azul is a professional football club with registered office in Monte Azul Paulista, São Paulo, Brazil (the "Respondent" or "Monte Azul"). The Respondent is affiliated to the Brazilian Football Confederation (*Confederacão Brasileira de Futebol* - "CBF"), which is turn is a member of FIFA.

II. BACKGROUND FACTS

3. Below is a summary of the main relevant facts, as presented in the parties' written submissions in the course of the present proceedings. Additional facts may be set out, where relevant, in

connection with the legal discussion which follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award only to the submissions and evidence it considers necessary to explain its reasoning.

4. On 15 January 2013, the Appellant and the Respondent entered into a *"Transfer Agreement (Loan)"* (the "Loan Agreement") regarding the transfer on loan to the Appellant of the player S. (the "Player") for a period starting on 15 January 2013 and ending on 30 June 2014, with an option for an additional season to be exercised before 31 March 2014. The Loan Agreement contained *inter alia* the following provisions:

"3. Price:

3.1. LOKEREN shall not pay any contribution to MONTE AZUL for this loan period.

11. Legal Fees and Costs:

In the event of a dispute arising from this Agreement, each party shall pay and be responsible for its own costs, including any legal costs, incurred which relate to any such dispute, including costs arising out of mediation, arbitration, litigation, or any alternative dispute resolution.

12. Transfer or Renewal of the Loan Period:

12.1 Pursuant to ART. 10, par. 3 of the FIFA RSTP, LOKEREN undertakes not to negotiate with S. in relation to any provisions contained within this Agreement without obtaining formal and express prior consent of MONTE AZUL.

12.2 MONTE AZUL can transfer S. to another club during the agreed loan period under the following conditions:

1) only a transfer during the transfer periods (Mercato) authorized by the Royal Belgian Football Federation; AND

2) the transfer amount has to be a minimum of EUR 3.000.000 (three million euros) if the transfer occurs before October 2013 and the transfer amount has to be a minimum of EUR 2.000.000 (two million euros) if the transfer occurs after October 2013; AND

3) LOKEREN did not exercise their right to purchase S. at the same conditions as the another club (pre-emption right).

All above-mentioned conditions should be met cumulative.

12.3 In case of transfer during the loan time to LOKEREN, the parties agreed that LOKEREN will receive directly 50% (fifty per cent) of the transfer amount.

12.4 LOKEREN has an option to renew this loan contract, on the same basis, for 1 (one) additional season. The option has to be renewed before 31 March 2014.

12.5 LOKEREN has the right to purchase S. at the same conditions as the another club (pre-emption right).

13. Applicable Legislation:

13.1 This Agreement and any non contractual obligations arising in connection with it shall be governed by and construed in accordance with the FIFA RSTP and in the extended needed pursuant other

FIFA regulations and rules and the Swiss laws.

13.2 Any dispute, controversy or claim arising out of or in connection with this Agreement (or arising out of or in connection with the relationship between the parties which is created by this Agreement), including any question regarding its existence, validity or termination, shall be referred to and finally resolved by the FIFA Players' Status Committee (cf. Art. 23 seq., and Art. 22, lit. f) of the FIFA RSTP) applying FIFA rules and regulations. Any appeal to a ruling of the FIFA Players' Status Committee shall be heard by the Court of Arbitration for Sports based in Lausanne, Switzerland (cf. Art. 23, par. 3 of the FIFA RSTP). The language to be used in any arbitral proceedings shall be English".

5. On 25 March 2014, the Appellant exercised the option to extend the loan of the Player for an additional season.

6. On 14 February 2015, the Appellant received from Al-Arabi Sports Club, a football club of Doha, Qatar ("Al-Arabi"), an offer for the "permanent" transfer of the Player to Al-Arabi for a total amount of EUR 2,500,000.

7. On 14 February 2015, the Respondent accepted the proposal submitted by the Appellant to transfer the Player to Al-Arabi, at the following conditions:

"Agreed transfer amount 2,500,000 euro payable in 2 instalments

- *First: 1,000,000 euro payable within 24 hours after receiving of the ITC from Belgian Football Association*
- *Second: 1,500,000 euro payable on or before 22 February 2016*
- *Solidarity contribution: AL ARABI will pay up to a maximum of 125,000 euro towards any solidarity contribution obligations (5%)*

In case of transfer during the loan to LOKEREN … MONTE AZUL will receive directly 50% (fifty percent) of the transfer amounts after receiving".

8. On the same 14 February 2015, a *"Transfer Agreement"* between the Appellant and Al-Arabi (the "Transfer Agreement") for a total amount of EUR 2,500,000 payable as follow:

"First instalment: EUR 1,000,000 (one million euro) transferred within 24 hours of receipt by Al Arabi from K.S.C. Lokeren Oost-Vlaanderen of all documents required to issue the ITC and register the Player with Al Arabi S.C. …

Second instalment: EUR 1,500,000 (one million and five hundred thousand euro) before 22 February 2016".

9. On 17 February 2015, the Appellant issued an invoice to Al-Arabi for the amount of EUR 1,000,000, corresponding to the first instalment due under the Transfer Agreement (the "First Instalment").

10. On 3 May 2015, the Appellant received the amount paid by Al-Arabi as First Instalment.

11. On 6 May 2015, the Respondent sent an invoice to the Appellant for the amount of EUR 500,000, corresponding to its share of the amount paid by Al-Arabi as the First Instalment

due under the Transfer Agreement.

12. On 3 June 2015, the Appellant replied that it would transfer to the Respondent its share once Al-Arabi had paid the entire transfer amount due under the Transfer Agreement.

13. On 12 June 2015, the Respondent insisted in its request for immediate payment of EUR 500,000.

14. On 30 July 2015, the Respondent lodged a claim against the Appellant before the Players' Status Committee of FIFA (the "PSC") requesting that the Appellant be ordered to pay the amount of EUR 500,000.

15. On 19 January 2016, the Appellant paid the amount of EUR 500,000 to the Respondent.

16. On 26 September 2016, the Respondent sent an invoice to the Appellant for the amount of EUR 750,000, corresponding to its share of the amount of EUR 1,500,000 due by Al-Arabi as the second instalment under the Transfer Agreement (the "Second Instalment"), requesting payment within 48 hours.

17. On 9 October 2016, the Appellant underlined in a letter to the Respondent that the Appellant was obliged to pay the amounts due to the Respondent only if and when Al-Arabi had paid the amounts due under the Transfer Agreement. In that connection, the Appellant informed the Respondent that it had filed a claim against Al-Arabi before the PSC to obtain the payment of the Second Instalment, and that it agreed *"to inform you upon receipt of the second instalment of the transfer fee and make payment of the sum of € 750,000 within the 15 working days after effective receipt"*.

18. On 5 December 2016, the Respondent lodged a new claim against the Appellant before the PSC, claiming that the Appellant had not complied with its contractual duties and requesting that the Appellant be ordered to pay the amount of EUR 750,000 as its share of the Second Instalment, *"plus the appropriate fines and interest"* until the date of effective payment.

19. On 17 January 2017, the Single Judge of the PSC rendered a decision on the claim filed by the Appellant against Al-Arabi (the "Al-Arabi Decision"), ordering Al-Arabi to pay to the Appellant the amount of EUR 1,500,000 plus interest at 5% p.a. as from 23 February 2016, until the date of effective payment.

20. On 2 February 2017, the Appellant formally invited Al-Arabi to comply with the Al-Arabi Decision.

21. On 28 February 2017, the Appellant informed FIFA that Al-Arabi had not complied with the Al-Arabi Decision, and therefore requested that the case be submitted to the FIFA Disciplinary Committee (the "DC") for evaluation and decision.

22. On 11 April 2017, FIFA informed Al-Arabi of the transmission of the file to the DC.

23. On 29 August 2017, the Single Judge of the PSC rendered a decision on the claim filed by the Respondent against the Appellant (the "Challenged Decision"), the operative part of which

reads as follows (emphasis in the original):

"1. The claim of … Monte Azul … is partially accepted.

2. … Lokeren … has to pay to … Monte Azul, ***within 30 days*** *as from the date of notification of this decision, the amount of EUR 750,000 as well as 5% interest p.a. on the said amount as from 23 February 2016 until the date of effective payment.*

3. In the event that the aforementioned sum, plus interest, 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.

4. Any further claims lodged by … Monte Azul … are rejected.

5. The final costs of the proceedings in the amount of CHF 20,000 are to be paid by … Lokeren … within 30 days as from the date of notification of the present decision, as follows:

5.1 The amount of CHF 15,000 has to be paid to FIFA …

5.2 The amount of CHF 5,000 has to be paid directly to … Monte Azul. […]".

24. On 8 November 2017, the DC rendered a decision with respect to Al-Arabi, sanctioning it pursuant to Article 64 of the FIFA Disciplinary Code (the "FDC") for its failure to comply with the decision rendered by the PSC on 17 January 2017. The grounds of such decision were issued on 15 November 2017.

25. On 17 November 2017, the Appellant invited Al-Arabi to pay the amount due as Second Instalment, plus interest from 23 February 2016.

26. On 27 November 2017, the grounds of the Challenged Decision were communicated to the Parties. They read, in the pertinent portions, as follows:

"12. … the Single Judge thoroughly analyzed the documents on file and, in particular, the content of the documentation and allegations submitted by the parties. In this regard, the Single Judge recalled that the Respondent acknowledged its willingness to pay to the Claimant the amount of EUR 750,000.

13. As a result, considering the legal principle of burden of proof as well as the argumentation and documentation presented by both parties, the Single Judge considered that it remained uncontested that the Claimant had not received the outstanding payment of EUR 750,000 from the Respondent.

14. Turning his attention to the letter dated 14 February 2015 and in accordance with the agreement concluded between the Respondent and Al-Arabi SC, the Single Judge emphasized that it remained undisputed that the Claimant is contractually entitled to receive from the Respondent a full payment of the 50% of the second instalment of the transfer fee of EUR 1,500,000.

15. Bearing in mind the aforementioned and the basic legal 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 the Respondent had breached its contractual obligations towards the Claimant and should, as a consequence, be liable to pay to the Claimant the amount of EUR 750,000 in accordance with the agreement concluded between the Respondent and Al-Arabi SC and the letter dated 14 February 2015.

16. At this point, the Single Judge referred to the Respondent's argument that the payment to the Claimant is only due once it has received the payment from Al-Arabi SC. Furthermore, the Single Judge noted that according to the Respondent, the latter payment had been outstanding since 22 February 2016 and that the Single Judge of the Players' Status Committee had rendered a decision on 17 January 2017 condemning Al-Arabi SC to pay the outstanding amount of EUR 1,500,000 within 30 days as from the notification of the decision. In this respect, considering the specific circumstances of the matter at hand, as well as the wording of the written proposal which was not unambiguous in the opinion of the Single Judge, he concluded that the continuous non-payment by Al-Arabi SC could not be to the detriment of the Claimant which is not a party to the agreement concluded between the Respondent and Al-Arabi SC, and can therefore not be reasonably expected to conform itself to the (un)willingness of a third party to pay a certain amount.

17. In continuation and in view of the Claimant's request for "appropriate fines and interest, pro rata die" as of 22 February 2016 until the date of effective payment and in line with the well-established jurisprudence of the Players' Status Committee, the Single Judge decided to grant interest for late payment at a rate of 5% p.a. on the aforementioned amount, i.e. EUR 750,000, as from 23 February 2016 until the date of effective payment.

18. In addition, with regard to the Claimant's request related to the claimed legal costs, the Single Judge referred to art. 18 par. 4 of the Procedural Rules as well as to its longstanding and well-established jurisprudence, in accordance with which no procedural compensation shall be awarded in proceedings in front of the Players' Status Committee. Consequently, the Single Judge decided to reject the Claimant's request relating to legal costs.

19. In conclusion, the Single Judge decided that the claim of the Claimant is partially accepted and held that the Respondent has to pay to the Claimant the amount of EUR 750,000, plus interest at a rate of 5% p.a. on the said amount as from 23 February 2016 until the date of effective payment and that any further claims lodged by the Claimant are rejected.

20. Lastly, the Single Judge referred to art. 25 par. 2 of the Regulations in combination with art. 18 par. 1 of the Procedural Rules, according to which in the proceedings before the Players' Status Committee and the Single Judge, costs in the maximum amount of CHF 25,000 are levied. The costs are to be borne in consideration of the parties' degree of success in the proceedings and are normally to be paid by the unsuccessful party.

21. In respect of the above, the Single Judge reiterated that the claim of the Claimant is partially accepted only due to its claim for legal fees and that the Respondent is the party at fault. Therefore, the Single Judge concluded that the Respondent has to bear the entire costs of the current proceedings in front of FIFA. …".

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

27. On 12 December 2017, the Appellant filed with CAS a statement of appeal pursuant to Article R48 of the Code of Sports-related Arbitration (the "Code") against the Challenged Decision. In its statement of appeal, the Appellant nominated Mr Bernard Hanotiau, Attorney-at-law in Brussels, Belgium, as arbitrator.

28. On 18 December 2017, the CAS Court Office transmitted the statement of appeal to the

Respondent and, by separate letter, to FIFA informing it of the appeal filed in the event FIFA would decide to intervene in the arbitration.

29. On 21 December 2017, the Appellant filed its appeal brief pursuant to Article R51 of the Code.

30. On 27 December 2017, the CAS Court Office forwarded the appeal brief to the Respondent and to FIFA.

31. On 8 January 2018, the CAS Court Office informed the Appellant that DHL had been unable to successfully deliver the statement of appeal and the appeal brief to the Respondent, and therefore requested new contact details for the Respondent.

32. On 8 January 2018, the Appellant provided the address of the Respondent and of its counsel in the FIFA proceedings.

33. On the same 8 January 2018, therefore, the CAS Court Office transmitted to the Respondent (at the address of its counsel) a new copy of the statement of appeal and of the appeal brief.

34. On 26 January 2018, the CAS Court Office noted that the Respondent had failed, within the prescribed deadline, to nominate an arbitrator.

35. On 2 February 2018, the Respondent's counsel referred to the letters sent by the CAS Court Office and requested an extension of the deadline to nominate an arbitrator and to lodge its answer.

36. On 5 February 2018, the CAS Court Office indicated to the Respondent that the extension of the deadline to appoint an arbitrator could not be granted, as the deadline had already expired. At the same time, the CAS Court Office extended by 5 days the deadline for the Respondent to submit its answer.

37. On 6 February 2018, the Respondent advised the CAS Court Office that it had just been informed that the DC had ordered Al-Arabi to pay to the Appellant the amount due within 90 days. Therefore, *"for reasons of procedural economy and guided by criteria of common sense, discernment, fairness and timeliness"*, requested the CAS to suspend the arbitration and all pending deadlines for a period of 90 days.

38. On 7 February 2018, the Appellant agreed to the requested suspension.

39. On 8 February 2018, as a result, the CAS Court Office suspended the procedure *"for ninety (90) days as of today"*.

40. In a letter of 19 February 2018, FIFA informed the CAS Court Office that it renounced its right to intervene in the arbitration.

41. On 11 May 2018, the CAS Court Office confirmed that, in the absence of any news from the Parties, the arbitration was resumed, and therefore granted a deadline to 15 May 2018 for the

Respondent to file its answer.

42. On 17 May 2018, the CAS Court Office noted that no answer had been filed within the prescribed deadline and requested some clarification on the point from the Respondent.

43. On 17 May 2018, the Respondent indicated to the CAS Court Office that the arbitration should remain suspended, or that *"if this matter really be resumed, … [the Respondent] be given a new deadline for payment of the amount … and a new deadline for [its] answer …"*.

44. On 18 May 2018, the CAS Court Office in a letter to the Parties indicated that a new deadline for the Respondent to submit its answer could not be granted, as the deadline had already expired, and that the arbitration would proceed.

45. On 18 May 2018, the Respondent indicated that the letter of the CAS Court Office of 11 May 2018 had not been properly received, since it had gone in the *"spam box"*, and therefore that a new deadline for the answer had to be granted. At the same time, however, the Respondent maintained its position that the arbitration was to remain suspended, pending negotiations between the Parties. Finally, the Respondent requested that the deadline to file its answer be set, pursuant to Article R55.3 of the Code, only after the payment of the Appellant of all the advances on costs.

46. On 22 May 2018, the CAS Court Office confirmed the terms of its letters of 11 and 18 May 2018 and therefore that, in the absence of the Appellant's consent, the Respondent's requests concerning the possibility to file an answer would not be considered.

47. On 24 May 2018, the Appellant denied its consent to the granting to the Respondent of a new deadline for the answer.

48. On 25 May 2018, the Respondent expressed in a letter to the CAS Court Office its position on some procedural issues regarding the CAS arbitration, as well as on the merits of the dispute, stressing, *inter alia*, that the Challenged Decision *"was perfectly correct"*. At the same time, the Respondent insisted in its request that Article R55.3 of the Code be applied.

49. On 29 May 2018, the Appellant requested the CAS not to take into account the Respondent's letter of 25 May 2018.

50. On 30 May 2018, pursuant to Article R54 of the 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 decide the present matter was constituted as follows:

President:	Prof. Luigi Fumagalli, Professor and attorney-at-law in Milan, Italy
Arbitrators:	Mr Bernard Hanotiau, Attorney-at-law in Brussels, Belgium
	Mr Stefan Geir Thorisson, Attorney-at-law in Reykjavik, Iceland.

51. On 30 May 2018, the Respondent insisted that the CAS should write to the Appellant to request whether the Second Instalment had been paid by Al-Arabi. In addition, the

Respondent challenged the arbitrators appointed in this case, and namely Mr Bernard Hanotiau and Mr Stefan Geir Thorisson, because their declarations of independence had been signed 4 months before their appointment and had become *"useless"*, and because Mr Hanotiau had the same nationality of the Appellant. Finally, the Respondent insisted for the application of Article R55.3 of the Code and requested the termination of the proceedings pursuant to Article R64.2 of the Code because *"the Appellant has never paid the [Respondent's] advance of costs share"*.

52. On 31 May 2018, the CAS Court Office wrote the following letter to the Parties:

"The Respondent is advised that no challenge can be brought at this stage against the nominations of the arbitrators pursuant to Article R34 of the Code … as it is clearly inadmissible. Furthermore, its request that the coarbitrators be called to reassert their independence is without any basis and shall not be dealt with.

Furthermore, the Respondent is reminded that I have dealt with all of its requests until now and remind it that all is now with the Panel for its consideration.

The case shall not be considered as terminated at this stage as the Appellant has never been invited to substitute for the Respondent for the payment of the latter's share of the advance of costs as the Respondent itself never indicated it will not pay the same. According to the CAS Finance Director's letter of 11 May 2018, the Respondent was invited to pay its share of such costs by 25 May 2018. I understand that the Respondent will finally not pay its share of the advance of costs and the Appellant will be invited to pay such additional share by way of a separate letter.

Finally, the Respondent is kindly requested to refrain from filing any further unsolicited comments on the merits of the case".

53. On 4 June 2018, the CAS Court Office advised the parties that the Panel had decided to accept in the file the Respondent's letter of 25 May 2018 and to grant a deadline to the Appellant to answer the question raised by the Respondent with respect to the payment by Al-Arabi.

54. On 8 June 2018, the Appellant submitted its observations on the Respondent's letter of 25 May 2018, declaring, *inter alia*, that it had received on 24 May 2018 the payment from Al-Arabi of EUR 1,668,067.19, corresponding to the sum of EUR 1,500,000 (as the Second Instalment), interest, and costs of defence (equal to CHF 1,000). Since no settlement with the Respondent to terminate the arbitration could be found, the Appellant insisted that its request for relief be granted.

55. On 8 June 2018, the CAS Court Office invited on behalf of the Panel the Respondent to submit its observations on the Appellant's letter.

56. On 13 June 2018, the Respondent lodged its observations, noting that, since the Second Instalment had been paid to the Appellant, the Respondent was undoubtedly entitled to the payment of its share, including the accrued interest, *i.e.* to the payment of EUR 834,033.60.

57. On 19 June 2018, the CAS Court Office wrote on behalf of the Panel the following letter to the Parties:

"The Panel noted that, in its correspondence dated 8 June 2018, the Appellant declared that it received the amount due by Al Arabi SC for the transfer of the Player S. On the basis of the parties' latest submissions, the Appellant is invited to state … whether it maintains its appeal with the CAS in view of the following preliminary views:

- *Should the Panel deny the appeal and uphold the decision appealed against, the Appellant will be ordered to pay to the Respondent EUR 750,000 plus interest from the moment the payment was due;*
- *Should the appealed decision be set aside and the appeal upheld, the Appellant will be ordered to pay to the Respondent 50% of the amount it has received from the Qatari club, i.e. EUR 750,000 plus interest from the moment the payment was due.*

In the event the Appellant maintains its appeal, the parties are advised that, in accordance with Article R57 of the Code of Sports-related Arbitration, no hearing shall be held and the award will be rendered on the basis of the written submissions.

Should the appeal be withdrawn, the Panel will render an award on costs".

58. On 22 June 2018, the Appellant submitted that *"the economic difference depending from the award to intervene is important"*, considering, *inter alia*, the impact of the costs of the proceedings, and therefore that the appeal was maintained.

59. On 22 June 2018, the Respondent stressed, also in the light of the Appellant's position, that in essence the only question that remained to be determined related to the costs of the FIFA proceedings, as in any case the Appellant had recognized its debt to the Respondent. In that regard, the Respondent stressed that with respect to the FIFA costs it would be for FIFA to be *"the one to be appealed and to defend itself"*. In any case, if not terminated because of the Appellant's failure to pay the CAS costs, the appeal should be dismissed in its merits.

60. On 25 June 2018, the CAS Court Office issued, on behalf of the President of the Panel, an order of procedure (the "Order of Procedure").

61. On 26 June 2018, the Respondent indicated that it was not in a position to sign the Order of Procedure, since it contained the indication that the amount in dispute was EUR 750,000, while such amount was actually CHF 20,000, corresponding to the costs of the FIFA proceedings, following the Appellant's recognition of its debt to the Respondent.

62. On 27 June 2018, the CAS Court Office informed the Respondent that it could amend in writing the Order of Procedure, if it disagreed with some points. At the same time, the Respondent was informed that the total amount of the advance of costs for the CAS proceedings had been timely paid by the Claimant.

63. On 27 June 2018, the Appellant signed the Order of Procedure. At the same letter, the Appellant challenged the admissibility of the Respondent's letters of 22 and 26 June 2018.

64. On 28 June 2018, the Respondent signed the Order of Procedure, amending the amount in dispute.

65. On 4 July 2018, the Respondent indicated that the Appellant had not yet paid the amount due, and that therefore it would contact the URBSFA in that regard. At the same time, the Respondent requested that the case, in light of its limited value, could be referred for decision to a sole arbitrator.

66. On 5 July 2018, the CAS Court Office indicated that since the Panel had been constituted and the advance on costs fully paid, the decision to refer the case to a sole arbitrator was considered late and moot.

IV. THE POSITION OF THE PARTIES

67. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced. The Panel confirms, however, that it has carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summary.

A. The Position of the Appellant

68. The Appellant, in its appeal brief, requested the CAS:

"TO DECLARE the Appeal admissible and founded;

TO SET ASIDE the decision pronounced on 29 August 2017 (in Zurich) by the Single Judge of the FIFA Players' Status Committee;

TO ORDER the Respondent to be born all the costs of the arbitration to be determined and served to the Parties by the CAS Court Office (i.e. the Court Office Fee and the expenses for the arbitration proceedings);

TO ORDER the Respondent to pay to the Appellant a total amount of CHF 10'000 as a contribution towards the expense incurred in connection with these arbitration proceedings".

69. The essence of the submissions of the Appellant in support of its request that the Challenged Decision be set aside can be summarized as follows:

i. at the time the Transfer Agreement was signed, the Player was on loan to the Appellant. Therefore, according to the FIFA rules, the Player could not be transferred to Al-Arabi without the Respondent's consent and participation. As a result, the Respondent must be considered to be a party to the Transfer Agreement;

ii. indeed, on 14 February 2015, the Respondent agreed to the transfer of the Player to Al-Arabi and accepted that the payment of its share of the transfer fee be made *"after receiving"*. The terms of such documents are clear;

iii. the fact that the payment of the Respondent's share was due only after the Appellant had received the corresponding payment by Al-Arabi was acknowledged by the Respondent in its submissions before FIFA of 30 July 2015, concerning the First Instalment;

iv. on the other hand, the consistent position of the Appellant has always been that

payment was due only after Al-Arabi had paid the transfer fee due under the Transfer Agreement;

v. the Appellant has acted in good faith and taken all the available steps to obtain the payment of the Second Instalment from Al-Arabi;

vi. if the Challenged Decision is set aside, no payment has to be made by the Parties to FIFA with respect to the FIFA proceedings.

B. The Position of the Respondent

70. The Respondent in various instances insisted that the proceedings be terminated pursuant to Article 64.2 of the Code for the Appellant's failure to pay the full advance of costs In the merits, the Respondent requested that in any case the appeal be dismissed. In its letter of 22 June 2018, the Respondent summarized its request as follows:

"… if the Panel goes forward and an award be eventually rendered, THE RESPONDENT requests the CAS to reject this appeal, confirming the decision hereby appealed in its entirety, ordering THE APPELLANT to pay the sum of 50% (fifty percent) of the second instalment of the transfer fee of THE PLAYER, exactly as determined by FIFA …, i.e. including the interest until the effective date of payment and the costs there determined. Furthermore, THE APPELLANT shall be considered responsible for and bear all costs incurred with the present procedure and cover all legal expenses of THE RESPONDENT related to the present procedure, taking into consideration, also, LOKEREN'S lack of bona fide during this appeal".

71. The position of the Respondent with respect to the merits of the appeal, as expressed mainly in the Respondent's letters of 25 May 2018, 13 and 22 June 2018, can be summarised as follows:

i. the Appellant *"knows very well that it has a debt"* to the Respondent, as this was recognized before FIFA and is made clear by the terms of the Transfer Agreement negotiated and established by the Appellant with Al-Arabi, without any involvement of the Respondent;

ii. *"if the terms of the … Transfer Agreement do not help the [Appellant] to receive its instalment from [Al-Arabi], that cannot pass-on to the relationship … between the Respondent and the Appellant"*, which *"remains in full force and effect"*;

iii. therefore, as also established by the Challenged Decision, the Appellant has to pay to the Respondent the amount of EUR 750,000 plus interest at 5% p.a. from 23 February 2016, together with CHF 5,000 as the portion of the costs of the FIFA proceedings advanced by the Respondent;

iv. the Challenged Decision was *"perfectly correct"*, because the Respondent was not a party to the Transfer Agreement, and therefore its claim does not depend upon events to which it has not contributed or taken part, and because the payment to the Respondent by the Appellant is separate and does not prejudice any claim of the Appellant towards Al-Arabi;

v. in any case, the Appellant has now confirmed that it has received the payment from

Al-Arabi, including interest. Therefore, 50% of what it has received must by transferred without delay by the Appellant to the Respondent, with interest accruing up to the date of the final payment;

vi. with respect to the costs of the FIFA proceedings, *"it there is any fault, it was caused by FIFA"* and not by the Respondent, *"meaning that FIFA would be the one to be appealed and to defend itself here"*.

V. JURISDICTION

72. Article R47 of the Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with the 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 him prior to the appeal, in accordance with the statutes or regulations of that body".

73. The jurisdiction of CAS to hear the appeal filed by the Club against the Appealed Decision is not disputed and is contemplated by Article 57 *et seq*. of the Statutes of FIFA in the following terms:

Article 57 *"Court of Arbitration for Sport (CAS)"*

"1. FIFA recognises 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.

2. 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".

Article 58 *"Jurisdiction of CAS"*

"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. […]".

74. It follows, therefore, that CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

75. Under Article R49 of the Code:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against".

76. Article 58 para. 1 of the Statutes of FIFA in that connection confirms that:

"Appeals against final decisions passed by FIFA's legal bodies … shall be lodged with CAS within 21 days of notification of the decision in question".

77. The grounds of the Appealed Decision were notified to the Appellant on 27 November 2017 and the Appellant filed its statement of appeal on 12 December 2017. Therefore, the 21-day deadline to file the appeal was met.

78. In addition, the statement of appeal complies with the requirements of Article R 48 of the Code.

79. The appeal, therefore, is admissible.

VII. APPLICABLE LAW

80. Article R58 of the Code provides as follows:

"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".

81. The Panel notes that Article 57 par. 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 apply the various regulations of FIFA and additionally Swiss law".

82. The Panel therefore finds that, as also contemplated by Article 13.1 of the Loan Agreement, the relevant FIFA rules and regulations shall be applied primarily and that Swiss law shall be applied subsidiarily.

VIII. MERITS

83. The object of the present dispute is the Challenged Decision, whereby the PSC ordered the Appellant to pay to the Respondent the amount of EUR 750,000 plus interest at 5% p.a. from 23 February 2016 until the date of actual payment, and imposed on the Appellant the costs of the FIFA proceedings.

84. In that context, a number of issues were raised by the Parties, both relating to the CAS procedure and the merits of the appeal. As to the procedure, the Respondent insisted on several occasions (*ad nauseam*, as it was put) in its request that the appeal be considered withdrawn and the arbitration terminated for the Appellant's failure to pay the entire amount of the advance of costs set by the CAS administration. As to the merits of the dispute, the Appellant requested that the Challenged Decision be set aside; on the other hand, the Respondent defended the Challenged Decision and asked the Panel to confirm it, or, in any case, to order the Appellant to pay to the Respondent the amount of EUR 750,000 plus

interest at 5% p.a. from 23 February 2016 until the date of actual payment

85. As a result, the main issues to be resolved by the Panel are the following:

a. is the appeal to be considered withdrawn?

b. if not, is the Challenged Decision to be set aside?

86. The Panel shall examine those issues separately and in sequence.

A. Is the appeal to be considered withdrawn?

87. In the course of the arbitration, the Respondent invoked the final portion of the second paragraph of Article 64.2 of the Code, dealing with advances of costs, under which *"If a party fails to pay its share, another may substitute for it; in case of non-payment of the entire advance of costs within the time limit fixed by the CAS, the request/appeal shall be deemed withdrawn and the CAS shall terminate the arbitration"*. In the Respondent's opinion, the Appellant failed to timely pay the entire advance set by the CAS Secretary General: as a result, the appeal should be deemed withdrawn and the arbitration terminated.

88. The Panel notes, however, that, as confirmed by the CAS Court Office in a letter of 27 June 2018 (*supra*, § 62) the Appellant paid the total amount of the advance of costs in the time limit fixed by CAS, following the Respondent's failure to pay its share by 25 May 2018 and pursuant to a request sent to the Appellant thereafter (see § 52 above).

89. As a result, the appeal cannot be deemed withdrawn and the arbitration terminated.

B. Is the Challenged Decision to be set aside?

90. The main point of the dispute concerns the obligation of the Appellant to pay to the Respondent a share (50%) of the Second Instalment for the transfer of the Player to Al-Arabi. As said, the Appellant wants the Challenged Decision that ordered such payment to be set aside.

91. The Panel finds that the Appellant's request cannot be granted.

92. In fact, the issue which was raised in the appeal was about whether the Appellant's obligation to pay to the Respondent EUR 750,000 (*i.e.*, 50% of the Second Instalment) arose only after the payment by Al-Arabi to the Appellant of USD 1,500,000 as the Second Instalment or existed irrespective of such payment. The Challenged Decision (at its para 16) found, *"considering the specific circumstances of the matter at hand, as well as the wording of the written proposal which was not unambiguous …, … that the continuous non-payment by Al-Arabi SC could not be to the detriment of the Claimant which is not a party to the agreement concluded between the Respondent and Al-Arabi SC, and can therefore not be reasonably expected to conform itself to the (un)willingness of a third party to pay a certain amount"*. Therefore, the payment to the Respondent of EUR 750,000 plus interest as from 23 February 2016 was ordered, even though Al-Arabi had not paid to the Appellant

the Second Instalment.

93. In the course of the arbitration, however, the Appellant admitted that, as a result of the steps it had taken before FIFA against Al-Arabi, it finally received the amount corresponding to the Second Instalment, plus interest as from 23 February 2016. Therefore, even according to the Appellant's contentions, the amount of EUR 750,000 (*i.e.*, 50% of the Second Instalment), plus interest as from 23 February 2016 is now due to the Respondent, and its payment should be ordered by this Panel as per the Respondent's request.

94. Such order, however, would exactly correspond to the order contained in the Challenged Decision. Therefore, in the case the Panel found that the PSC was wrong and that payment was not due before the receipt by the Appellant of the Second Instalment, the Panel would simply disagree with the PSC as to the interpretation of the Loan Agreement, but would reach the same "operative" conclusion, even though on a different basis.

95. The Panel finds therefore that the Appellant has no actual legal interest worth of protection in obtaining the setting aside of the Challenged Decision, as the outcome of the arbitration would always be the same.

96. In order to keep the arbitration alive, the Appellant submits that an issue as to the costs of the FIFA proceedings would still be open, as its appeal was directed also against the portion of the Challenged Decision that ordered it to pay CHF 20,000, of which CHF 15,000 to FIFA and CHF 5,000 to the Respondent.

97. The Panel does not agree with such contention. The Appellant is found in this arbitration liable to pay the Respondent's share of the Second Instalment in the same amount as it was found liable to pay by the Challenged Decision, irrespective of the reasoning in support of such identical finding. Therefore, the Appellant should also bear the costs of the FIFA proceedings that reached that conclusion.

98. In conclusion, the Challenged Decision is not to be set aside.

IX. CONCLUSION

99. Based on the foregoing, the Panel holds that the appeal has to be dismissed and the Challenged Decision confirmed. All other and further motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Sporting Lokeren Oost-Vlaanderen on 12 December 2017 against the decision issued on 29 August 2017 by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association, notified with its grounds on 27 November 2017 is dismissed.

2. The decision issued on 29 August 2017 by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association, notified with its grounds on 27 November 2017 is confirmed.

3. (…).

4. (…).

5. All other motions or prayers for relief are dismissed.