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Case Overview: CAS 2019/A/6129 US Città di Palermo v FIFA

Lombardi Associates represented US Città di Palermo (“**Palermo**”) in its appeal submitted to the Court of Arbitration for Sport (“**CAS**”) against a decision of the FIFA Disciplinary Committee.

Factual Background

On 30th November 2010, the agent Mr Horacio Luis Rolla lodged a claim with FIFA against Palermo for breach of a representation agreement.

Mr Rolla claimed that he was entitled to the amount of €850,000, plus interest.

On 7th May 2014, the Single Judge of the Players’ Status Committee rejected Mr Rolla’s claim (“**PSC Decision**”).

On 18th September 2014, Mr Rolla lodged an appeal with CAS against the PSC Decision.

A hearing was due to take place on 24th March 2015, however the parties entered into negotiations and asked CAS to suspend the proceedings.

On 25th May 2015, a settlement agreement was entered into between the parties, which annulled the PSC Decision.

The settlement agreement was ratified by CAS on 22nd July 2015 in the form of a CAS Consent Award.

According to the CAS Consent Award, Palermo agreed to pay Mr Rolla €1,000,000.

On 8th March 2018, FIFA opened disciplinary proceedings against Palermo in respect of a violation of article 64 of the FIFA Disciplinary Code for failure to comply with the CAS Consent Award.

By letter dated 12th September 2018, Palermo informed FIFA that it was discussing a payment plan with Mr Rolla.

By letter dated 17th September 2018, FIFA asked Mr Rolla to confirm whether an agreement had been concluded with Palermo. In such letter, FIFA drew Mr Rolla’s attention to FIFA circular letter no. 1628 dated 9th May 2018 (“**FIFA Circular**”) and quoted from such letter that “*the conclusion of an agreement between the parties will automatically lead to the closure of disciplinary proceedings.*”

By letter dated 17th September 2018, Mr Rolla informed FIFA that no payment plan had been agreed between the parties.

By letter dated 25th September 2018, Palermo informed FIFA that a payment plan had in fact been verbally agreed between the parties, and within the scope of such payment plan, it had initiated payment of the first instalment of €200,000.

On 5th October 2018, FIFA informed Palermo that it had received confirmation from Mr Rolla that the payment of €200,000 had been received, however because there had been no confirmation from Mr Rolla of the agreed payment plan, FIFA asked Palermo to immediately pay the remaining amount to Mr Rolla. FIFA also advised that if proof of payment of the remaining amount was not submitted by 12th October 2018, the matter would be submitted to a member of the FIFA Disciplinary Committee for consideration and a formal decision.

By letter dated 10th October 2018, Palermo advised FIFA that it was disappointed that Mr Rolla had not confirmed that the payment of €200,000 had been made in the scope of the ongoing payment plan. Palermo also explained to FIFA that due to the financial difficulties of the club, it was unfortunately not currently in a position to pay the full remainder of the debt, which Mr Rolla was aware of and had verbally acknowledged to the club.

On 19th October 2018, the Member of the FIFA Disciplinary Committee (“**FIFA Decision**”) found Palermo to have infringed article 64 of the FIFA Disciplinary Code by failing to comply in full with the CAS Consent Award. In particular, it was held that Palermo had only paid a partial amount of €200,000 to Mr Rolla.

According to the FIFA Decision, Palermo was ordered to pay a fine of CHF 30,000 and was granted a final deadline of 90 days in which to settle its debt to Mr Rolla. Furthermore, the FIFA Decision imposed a deduction of six points if payment was not made to Mr Rolla by the deadline.

The FIFA Decision

On 2nd November 2018, Palermo requested the grounds of the FIFA Decision. In such correspondence, Palermo advised FIFA that it was interested in analysing the reasoning of the FIFA Disciplinary Committee in relation to the application of the FIFA Circular in this case.

The grounds of the FIFA Decision were notified to Palermo on 9th January 2019.

In relation to the FIFA Circular, the FIFA Decision noted that on 17th September 2018, the FIFA Secretariat requested Mr Rolla to confirm whether an agreement had been concluded between the parties. Additionally, the FIFA Secretariat drew Mr Rolla’s attention to the contents of the

FIFA Circular, according to which the conclusion of an agreement between the parties would automatically lead to the closure of the disciplinary proceedings.

In reaching its decision, the Disciplinary Committee noted that, following the PSC Decision, Palermo and Mr Rolla concluded a settlement agreement on 25th May 2015, which was ratified by CAS on 22nd July 2015. Therefore, the CAS Consent Award had become final and binding.

The Disciplinary Committee confirmed that it was not allowed to analyse the case decided by CAS as to the substance, and its sole task was to analyse if Palermo complied with the CAS Consent Award.

In this regard, the Disciplinary Committee noted that only a partial payment of €200,000 had been made by Palermo and an outstanding amount remained due to Mr Rolla. Therefore, Palermo had not fully complied with the CAS Consent Award.

As a result, the Disciplinary Committee pronounced the club guilty under the terms of article 64 of the FIFA Disciplinary Code, which states as follows:

“Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a subsequent CAS appeal decision (financial decision), or anyone who fails to comply with another decision (non- financial decision) passed by a body, a committee or an instance of FIFA, or by CAS (subsequent appeal decision):

a) will be fined for failing to comply with a decision;

b) will be granted a final deadline by the judicial bodies of FIFA in which to pay the amount due or to comply with the (non-financial) decision;

c) (only for clubs:) will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, points will be deducted or relegation to a lower division ordered. A transfer ban may also be pronounced; ...”

In accordance with the above provisions, Palermo was fined CHF 30,000, granted a final deadline of 90 days to pay the amount due to Mr Rolla, and notified that a deduction of six points would be imposed on the club if payment was not made to Mr Rolla within the stipulated deadline.

On 30th January 2019, Palermo lodged an appeal with CAS against the FIFA Decision.

The CAS Award

During the CAS proceedings, Palermo argued that the FIFA disciplinary proceedings that led to the FIFA Decision did not take into account the fact that Palermo and Mr Rolla had been negotiating a payment plan.

Palermo believed that the application of the FIFA Circular by the FIFA Secretariat in this case (in its letter of 17th September 2018) was extremely significant, as it caused Mr Rolla to deny the existence of a payment plan. This is because confirmation of such an agreement between the parties would have led to the FIFA disciplinary proceedings being closed.

Palermo noted that the disciplinary proceedings had begun on 8th March 2018, which was two months earlier than the FIFA Circular (dated 9th May 2018) had been issued. Therefore, the FIFA Circular had been applied to the case retrospectively, which resulted in an unfavourable outcome for the club. The FIFA Circular had introduced a new rule in relation to payment plans, and if this rule had not been applied retrospectively to the case, the parties would have confirmed an amicable solution to the dispute without the imposition of any disciplinary sanctions on Palermo.

In the CAS Award, the Panel dismissed the appeal and focussed on the failure of Palermo to provide sufficient evidence to support its allegation that it had reached a verbal agreement with Mr Rolla for a payment plan. Given that Palermo had not provided any evidence to substantiate such an agreement with Mr Rolla, it had failed to discharge its burden of proof.

The Panel held that the mere fact that Palermo had made a payment of €200,000 did not sufficiently demonstrate that Mr Rolla had consented to receive payments in instalments, and noted that no details of the due dates and number of instalments of the alleged payment plan had been referred to by Palermo.

The Panel decided that in the absence of a concrete settlement agreement or specific payment plan, the FIFA Circular had absolutely no bearing on the case. The FIFA Circular could not have affected the outcome of the disciplinary proceedings, given that Palermo was in continuous breach of its payment obligations to Mr Rolla under the CAS Consent Award, without valid justification. There was no procedural impropriety in the administration of the disciplinary proceedings that could possibly have prejudiced the interests of Palermo.

Conclusion

The disciplinary proceedings that led to the FIFA Decision provide an interesting look at the potential impact of FIFA circular letter no. 1628 concerning the closure of proceedings when a settlement or payment plan is agreed between the parties.

As the creditor in this case, if Mr Rolla had confirmed to FIFA the existence of an agreed payment plan, and if such payment plan was not subsequently respected by Palermo, he would have needed to start again from the beginning in order to request FIFA to enforce the CAS Consent Award.

The change introduced by the FIFA Circular may effectively mean the end of settlement agreements and payment plans in future cases. Creditors will no doubt be very reluctant to confirm such agreements, knowing that if the debtor breaches the settlement agreement or payment plan then the creditor will need to start from the beginning and lodge a new claim with FIFA in order for the payment to be enforced, which may take considerable time and involve further costs.

In relation to the CAS proceedings in this particular case, it was possibly a missed opportunity for CAS to analyse the application of the FIFA Circular. This may have been the first appeal at CAS concerning the FIFA Circular, and particularly its retrospective application to a FIFA disciplinary case. Palermo was expecting further analysis from CAS on this point. However, ultimately the CAS Award concentrated on Palermo's failure to pay the creditor and its lack of evidence in relation to a settlement agreement or payment plan between the parties.

It will be interesting to see the further developments in this area and the impact that the FIFA Circular has on other disciplinary cases in the future.

Lombardi Associates