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FIBA Arbitral Tribunal (FAT)

ARBITRAL AWARD

(0071/09 FAT)

by the

FIBA ARBITRAL TRIBUNAL (FAT)

Mr. Quentin Byrne-Sutton

in the arbitration proceedings between

Mr. Lazaros Papadopoulos, Greek Posts (Elta), Chortiati,
P.O. Box 173, 57010 Thessaloniki, Greece

- Claimant -

Represented by Mr. Antonios Evagelopoulos,
Vassilogeorgis and Partners Law Firm,
Ermou 10, Thessaloniki, Greece

vs.

Fortitudo Pallacanestro Societa' Sportiva Dilettantistica a R.L.,
(formerly Fortitudo Pallacanestro SRL), Via San Felice 103, 40122
Bologna, Italy (registered office) and Via Nannetti 1, 40122, Bologna, Italy
(for the purpose of notifications)

- Respondent -



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1. The Parties

1.1. The Claimant

1. Mr. Lazaros Papadopoulos (hereinafter referred to as “the Player”) is a Greek professional basketball player, who during the 2008-2009 season of the Italian “Serie A” Championship was playing for the basketball club Fortitudo Pallacanestro.

1.2. The Respondent

2. Fortitudo Pallacanestro Societa’ Sportiva Dilettantistica a R.L. (the “Club”), formerly named Fortitudo Pallacanestro SRL, was - during the 2008-2009 season of the Italian “Serie A” Championship - an Italian professional basketball club.

2. The Arbitrator

3. On 18 December 2009, the President of the FIBA Arbitral Tribunal (the “FAT”) appointed Mr. Quentin Byrne-Sutton as arbitrator (hereinafter the “Arbitrator”) pursuant to Article 8.1 of the Rules of the FIBA Arbitral Tribunal (hereinafter the “FAT Rules”). Neither of the Parties has raised any objections to the appointment of the Arbitrator or to his declaration of independence.

3. Facts and Proceedings

3.1. Summary of the Dispute

4. On 3 December 2008, the Player and the Club entered into an agreement whereby the latter engaged the Player for the season 2008-2009 (the “Main Agreement”).



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5. Articles 1.1 and 1.3 of the Main Agreement provide that:

“This agreement between CLUB and PLAYER is valid for one (1) season until the end of the 2008/2009 basketball season [...] Such employment of the PLAYER by the CLUB will include the PLAYER’S participation in the CLUB’S regular season, play-off exhibition, tournament and friendly games and practices during the noted term”

6. With respect to the Player’s remuneration, article 2.2 of the Main Agreement stipulates that:

*“Upon signing and successfully passing the physical exam the CLUB agrees to pay the PLAYER the following: [...] **2008/2009 Season \$ 400,000 euro net of any Italian taxes** [...] The PLAYER’S fully guaranteed salary shall be \$ 400,000 euro (fourhundredthousand) net of all Italian taxes”.*

7. The Club’s full guaranteeing of the Player’s salary is confirmed in the following terms under article 4.1 of the Main Agreement:

“The CLUB agrees that this Agreement and all of the payments required to be made to the PLAYER are fully and unconditionally guaranteed, provided that PLAYER passes the medical examinations administered by CLUB as provided above. Therefore, such payments shall be made even in the event of death, injury (whether permanent or non-permanent and regardless of whether the injury is basketball related, provided that Injury or death are not due to negligence or misconduct of PLAYER), mental disability or lack of skill”. Accordingly, all payments required within are not contingent on anything other than (i) PLAYER passing the medical examination as provided for above and (ii) the PLAYER providing the services in accordance with this Agreement.”

8. On the same date, the Player and the Club entered into a short Side Agreement (the “Side Agreement”) with the following content:

“[R]eference is made to the agreement entered into between you and our club as of today’s date (the “Agreement”) and we agree to split your net compensation as follows:

- (i) 50,000 Euro net as signing bonus to be paid on December 20, 2008, provided that by that date you have passed the medical examination provided for in the Agreement and that, consequently, the Agreement shall have entered into effect;*
- (ii) 100,000 Euro net by means of an Italian league contract; and*



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(iii) 250,000 Euro net by means of an image contract to enhance your image as a professional player playing for the Club; the relevant payments shall be made as follows: 62,500 Euro net on January 15, 2009; 62,500 Euro net on February 15, 2009; 62,500 Euro net on April 15, 2009 and 62,500 Euro net on May 15, 2009.

Also Payment of the amounts sub (ii) and (iii) is conditional upon your passing the medical examination to be conducted as provided for in the Agreement.”

9. Article 2.2 of the Main Agreement also stipulated that:

“It is agreed that the Italian league contract to be entered between Club and Player shall be deposited and registered according to the rules of the Italian Basketball Federation (FIB) and of the Italian League.”

10. The Player and the Club signed the Italian League contract on 4 December 2008 (the “League Contract”).

11. Article 2 of the League Contract stipulated that the Player would receive for the 2008-2009 season a total remuneration “before tax” of EUR 186,000, made up of EUR 176,000 in salary and EUR 10,000 in costs to be met by the Club. No schedule of payments was included in the League Contract.

12. The League Contract refers to certain provisions of the Italian Civil Code and under article 6 stipulates the following with regard to dispute resolution:

“All disputes regarding the interpretation and execution of the collective agreement and of the present individual labour contract, including those relating to disciplinary measures, are deferred to the Permanent Board of Conciliation and Arbitration ruled by article 29 and following of the “Professional Players 2003” collective Labour Agreement”.

13. On 3 December 2008, the Player also entered into an exclusive license agreement (the “License agreement”) with a third party named “Krisken Management SA” (“Krisken”), a company having its seat in Geneva Switzerland, whereby he licensed all his image rights to Krisken for the duration of 2008-2009 season.

14. According to article 9 of the License agreement, as consideration for the use of the



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Player's image rights, Krisken would pay the Player the amount of EUR 250,000 stipulated in the Side Agreement in four installments of EUR 62,500 on the dates stipulated in the Side Agreement.

15. Article 7 of the License agreement stipulated that Krisken

"... is authorized to sublicense to third parties, including to Fortitudo Pallacanestro SrL, the rights under the Agreement".

16. Article 11 of the License agreement provided that Swiss law governs the agreement and that any disputes relating thereto would be submitted to the exclusive jurisdiction of the courts of Switzerland.

17. On the same day of 3 December 2008, the Club entered into a sublicense agreement with Krisken (the "Sublicense"), which in content was largely back-to-back with the License agreement, whereby the latter sublicensed the Player's same image rights to the Club for the season 2008-2009.

18. As consideration for the sublicensing of the Player's image, article 3 of the Sublicense provided that the Club would pay Krisken four installments of EUR 66,250 on the same dates as Krisken undertook to pay the Player under the License agreement.

19. According to article 12 of the Sublicense, Italian law governs the agreement and any disputes relating thereto are subject to the exclusive jurisdiction of the courts of Bologna, Italy.

20. Also, on 3 December 2008, the Player signed a side letter whereby he declared

"...reference is made to the agreement entered into as of December 3, 2008 between myself and your Club (the "Agreement") and I hereby acknowledge that the contract between Fortitudo Pallacanestro SrL and Krisken Management SA has been entered into in execution of the Agreement and that the consideration of Euro 250.000 provided for in such contract between Fortitudo Pallacanestro SrL and Krisken Management SA, dated December 3, 2008 is part of the global salary compensation provided for in the



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Agreement”.

21. The Player joined the team as planned and played all the officially-scheduled championship games between 7 December 2008 and 10 May 2009 (last game against *Bancas Tercas Teramo Club*) before departing during the last week of May.
22. However, on 15 April 2008, before departing, the Player asked his lawyer to put the Club on notice to pay the outstanding amount of the total salary of EUR 400,000 that he believed to be outstanding on that date.
23. Having not received any payments from the Club further to the foregoing notice letter, the Player filed a Request for Arbitration with the FAT.
24. During the course of the proceedings before the FAT, the Parties exchanged various submissions and filed documents (as summarized below in section 3.2 of this award) which establish that they agree that, in total, the Player received remuneration in an amount of EUR 212,500 for the 2008-2009 season, out of which EUR 150,000 was paid directly by the Club and EUR 62,500 was received from Krisken.
25. However, whereas the Player deems the Club to owe him the difference between the foregoing payments and the EUR 400,000 of salary foreseen in the Main Agreement, i.e. an amount of EUR 187,500, the Club contends that any outstanding remuneration is owed by Krisken and not by the Club under the License agreement to which the Club is not a party.
26. In addition, in its submissions the Club has made a counterclaim under articles 3.2 and 3.3 of the Main Agreement, whereby it is claiming a total amount of EUR 2,956.00 from the Player based on various alleged costs paid in his place for traffic violations and for apartment-related charges and washing the car loaned to him.



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3.2. The Proceedings before the FAT

27. On 9 December 2009, the Player filed a Request for Arbitration in accordance with the FAT Rules.
28. On 10 December 2009, the non-reimbursable handling fee of EUR 3,000 paid by the Player was received by the FAT.
29. On 5 January 2010, by means of a confirmation letter, the FAT informed the Parties that Mr. Quentin Byrne-Sutton had been appointed as the Arbitrator in this matter and fixed the advance on costs to be paid by the Parties as follows:

<i>“Claimant (Mr. Papadopoulos)</i>	<i>€ 4,500</i>
<i>Respondent (Fortitudo Pallacanestro)</i>	<i>€ 4,500”</i>

30. In the same confirmation letter, the FAT fixed 26 January 2010 as the time limit within which the Club should file its Answer in accordance with the FAT Rules.
31. By procedural order of 25 January 2010, the FAT extended to 5 February 2010 the deadline for both Parties to pay their respective portion of the advance on costs.
32. The Club failed to submit an Answer to the Request for Arbitration within the fixed deadline.
33. On 5 February 2010, the Player paid his portion of the advance on costs in an amount of EUR 4,500.
34. By procedural order of 11 February 2010, the FAT informed the Player that the Club had failed to pay its advance on costs within the new deadline and that, as a result, under Article 9.3 of the FAT Rules the Player was required to substitute for the Club if he wished the proceedings to continue.
35. On 24 February 2010, the Player made the substitute payment in an amount of



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EUR 4,500.

36. By procedural order of 16 March 2010, the FAT informed the Parties that the Player was requested by the Arbitrator to submit additional information and any related written evidence regarding certain aspects of his claim, and that the Club would be given the opportunity to comment thereon, after which the Arbitrator would decide whether or not a hearing would be held.
37. On 21 April 2010, the Player submitted his answers to the Arbitrator's questions and filed related documents.
38. By procedural order of 26 April 2010, the Club was given the opportunity to file comments on the Player's answers.
39. On 11 May 2010, the Club submitted its observations on the Player's answers and documents.
40. By procedural order of 31 May 2010, the Club was invited to supplement in an amount of EUR 3,000 the advance on costs, given its choice to file a submission on 11 May 2010; and the Player was provided with a deadline until 11 June 2010 to answer certain additional questions and to provide any observations on the Club's submission of 11 May 2010.
41. On 7 June 2010, the Player applied for an extension until 18 June 2010 to file his answers, and the next day the Arbitrator granted such request.
42. On 8 June 2010, the Club paid the requested advance on costs of EUR 3,000.
43. On 17 June 2010, the Player submitted his answers.
44. On 21 June 2010, the Club was given the opportunity to file its comments on the Player's answers.



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45. On 30 June 2010, the Club submitted its comments.
46. By procedural order of 5 July 2010, the proceedings were closed and the Parties invited to submit their statements of cost.
47. On 12 July 2010, the Player submitted his account of costs.
48. The Club did not submit its account of costs.

4. The Positions of the Parties

4.1. The Claimant's Position

49. The Player submits the following in substance:
 - By not paying the entire contractually-agreed salaries of the Player for the 2008-2009 season despite the Player having fulfilled all his obligations, the Club is in breach of its contractual duties.
 - Accordingly and because the Main Agreement is a fully-guaranteed contract, the Club is liable for the payment of the entire outstanding salaries, which represent the difference between the contractually-agreed amount of EUR 400,000 and the EUR 212,500 received by the Player. Consequently, the Player is entitled to request payment from the Club of the balance of EUR 187,500.
 - The other agreements entered into do not detract from this overall engagement and duty of the Club under the Main Agreement to guarantee payment of his full salary of EUR 400,000 for the season 2008-2009; the License agreement having been required by the Club solely in its own interest as a tax-saving instrument,



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whereby Krisken would in effect act as an intermediary to make payments on behalf of the Club, and the Player having never provided any athletic or commercial services to Krisken.

- With respect to the counterclaim, it must be rejected for lack of supporting evidence of the damages and payments alleged by the Club and because the document listing the claimed amounts is not translated into English.

50. In his Request for Arbitration dated 9 December 2009, the Player requests the following relief:

"Claimant(s) request(s): The payment of the rest contractual image rights fees which are 187.500 euro (Total amount of the image right fees: 250.000 euro)."

4.2. Respondent's Position

51. The Club submits the following in substance:

- Contrary to the Claimant's allegations, the Player did sign an image contract whereby he licensed his image rights to Krisken on 3 December 2008, i.e. to a third party and not to the Club, the latter then receiving a sublicense from Krisken.
- Furthermore, in a letter of the same date the Player acknowledged the existence of the sublicense and acknowledged that the consideration to be paid by the Club thereunder (EUR 250,000) was "... part of the global salary compensation provided for in the agreement".
- The Main Agreement was a mixed contract providing that part of the Player's



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remuneration would stem from the League Contract. Furthermore, it was the Parties' intention to regulate their relationship through a partial transfer of the Player's contractual rights, i.e. the image rights, via the signing of the separate licence and sublicense agreements.

- Accordingly, the Player's compensation rights derive from several distinct contracts.
- With respect to any outstanding remuneration deriving from the License agreement, the Player cannot claim it from the Club in this arbitration because such amount is owed by a third party (Krisken) under a contract to which the Club is not a party.
- Therefore, the Player should have made his claim against the debtor Krisken on the basis of article 11 of the License agreement, whereby any disputes thereunder are subject to Swiss law and to the exclusive jurisdiction of Swiss courts.
- Consequently, the FAT lacks jurisdiction to decide upon any amounts due under the License agreement.
- Similarly, any claim that the Club did not pay Krisken is outside the scope of jurisdiction of the FAT since the Sublicense provides that any disputes thereunder are subject to Italian law and to the exclusive jurisdiction of the Italian courts.
- In any event "... *Fortitudo has completely fulfilled all the contractual obligations towards Papadopoulos Lazaros, and this time nothing further is owed to the*



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athlete”.

- The Club is counterclaiming EUR 2,956.00 against the Player under the Main Agreement based on the expense of a large number of traffic violations allegedly committed by him for which the Club had to pay fines (representing a total cost of EUR 1,461.68) and on apartment-related charges and the cost of washing the car the Club had to pay in his place (representing a total of EUR 1,494.32).

5. The jurisdiction of the FAT

52. Pursuant to Article 2.1 of the FAT Rules, “[t]he seat of the FAT and of each arbitral proceeding before the Arbitrator shall be Geneva, Switzerland”. Hence, this FAT arbitration is governed by Chapter 12 of the Swiss Act on Private International Law (PILA). The jurisdiction of the FAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.
53. The Arbitrator finds that the dispute referred to him is of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA¹.
54. The jurisdiction of the FAT over the dispute results from the arbitration clause in article 7.3 of the Main Agreement, which reads as follows:

“Any dispute arising or related to the present Agreement shall be submitted to the FIBA Arbitral Tribunal (FAT) in Geneva, Switzerland and shall be resolved definitely in accordance with the FAT Arbitration Rules by a single arbitrator appointed by the FAT President. The seat of the arbitration shall be Geneva, Switzerland and the language of the arbitration shall be English The Arbitration [sic] shall decide the dispute ex aequo et bono. Awards of the FAT can be appealed to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland. To the extent legally possible under Swiss law, recourse to the Swiss Federal Tribunal against awards of the FAT and against decisions of the Court of

¹ Decision of the Federal Tribunal 4P.230/2000 of 7 February 2001 reported in ASA Bulletin 2001, p. 523.



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Arbitration for Sports (CAS) upon appeal shall be excluded.”

55. The Main Agreement is in written form and thus the arbitration agreement fulfills the formal requirements of Article 178(1) PILA.
56. With respect to substantive validity, the Arbitrator considers that there is no indication in the file that could cast doubt on the validity of the arbitration agreement under Swiss law (referred to by Article 178(2) PILA).
57. Concerning the counterclaim made by the Club there is no doubt that its subject-matter falls within the scope of the foregoing arbitration clause since the counterclaim is grounded in articles 3.2 and 3.3 of the Main Agreement. Furthermore, the jurisdiction of the Arbitrator is uncontested in that respect. Consequently, the Arbitrator has jurisdiction over that part of the dispute.
58. However, the Club is contesting the Arbitrator's jurisdiction to adjudicate the Player's claim for payment from the Club of any outstanding amounts of remuneration allegedly owed for his services as a player during the 2008-2009 Italian Championship. In essence, the Club is objecting that the Arbitrator lacks jurisdiction over the claim because any balance of remuneration is not owed under the Main Agreement but under the League Contract and/or the License agreement, which both contain a dispute-resolution clause of their own that does not refer to the FAT.
59. Therefore the issue that needs determining is whether the claim for payment made by the Player in these proceedings falls within the scope of the above-quoted FAT arbitration clause contained in the Main Agreement.
60. That is a matter of interpretation of the arbitration clause in light of the content of the Main Agreement.
61. The Arbitrator finds that for a combination of the following reasons the Player's claim as formulated does fall within the scope of the FAT arbitration clause contained in article 9.3 of the Main Agreement:



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- The Club and the Player are parties to the Main Agreement containing the FAT arbitration clause.
- The terms of the Main Agreement include all the essential elements of agreement between the Club and the Player with respect to the latter's right to remuneration for the season 2008-2009, i.e. the total amount net of tax of the Player's salary (EUR 400,000), the detail of services that the Player must render to be entitled to his full remuneration - including the timeframe and games involved (2008-2009 season) – the Player's fringe benefits, the guarantees offered to the Player and the conditions of termination of the agreement.
- It is clear from those terms of contract that, irrespective of any modalities that would be agreed upon in other agreements and side agreements as to the mode and schedule of payments, the Parties' common intent under the Main Agreement was that the Club itself was fully guaranteeing to the Player the payment of a total salary of EUR 400,000 by the end of the season 2008-2009 at the latest.
- It follows that the broad terms of the arbitration clause stating that "*Any dispute arising or related to the present Agreement shall be submitted to the FIBA Arbitral Tribunal (FAT) in Geneva, Switzerland ...*" necessarily encompass and were intended by the Parties to cover any disputes relating to the non payment by the end of the season 2008-2009 of any part of the Player's total guaranteed salary of EUR 400,000 stipulated in the Main Agreement.
- Payment by the Club of the balance of the total salary of EUR 400,000 due to the Player under the Main Agreement is precisely what the Player is claiming in this FAT arbitration.

62. For the above reasons, the Arbitrator has jurisdiction to adjudicate the Player's claim.



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6. Discussion

6.1. Applicable Law – *ex aequo et bono*

63. With respect to the law governing the merits of the dispute, Article 187(1) PILA provides that the arbitral tribunal must decide the case according to the rules of law chosen by the parties or, in the absence of a choice, according to the rules of law with which the case has the closest connection. Article 187(2) PILA adds that the parties may authorize the Arbitrators to decide “*en équité*” instead of choosing the application of rules of law. Article 187(2) PILA is generally translated into English as follows:

“the parties may authorize the arbitral tribunal to decide ex aequo et bono”.

64. Under the heading "Applicable Law", Article 15.1 of the FAT Rules reads as follows:

“Unless the parties have agreed otherwise the Arbitrator shall decide the dispute ex aequo et bono, applying general considerations of justice and fairness without reference to any particular national or international law.”

65. Article 7.1 of the Main Agreement provides that it “... *shall be construed, interpreted and enforced according to the laws of Italy*”, i.e. the laws of the country in which the player is residing and playing. However, article 7.3 of the Main Agreement stipulates that any disputes under the agreement shall be decided by the Arbitrator “*ex aequo et bono*”. It is therefore a matter of interpretation of the Main Agreement to determine how deciding the case *ex aequo et bono* fits with the reference to the laws of Italy.

66. The Arbitrator considers that, in the present case, the Parties’ common intention was to account for the mandatory rules of local labour law (in this case Italy) to regulate matters such as working hours, safety, insurances, etc. as long as they did not become contentious, but that any disputes deriving from the performance of the Parties’



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obligations under the contract would be decided *ex aequo et bono* if submitted to the FAT.

67. Consequently, the Arbitrator shall decide *ex aequo et bono* the issues submitted to him in this proceeding.
68. The concept of “*équité*” (or *ex aequo et bono*) used in Article 187(2) PILA originates from Article 31(3) of the Concordat intercantonal sur l’arbitrage² (Concordat)³, under which Swiss courts have held that arbitration “*en équité*” is fundamentally different from arbitration “*en droit*”:

“When deciding ex aequo et bono, the Arbitrators pursue a conception of justice which is not inspired by the rules of law which are in force and which might even be contrary to those rules.”⁴

69. This is confirmed by Article 15.1 of the FAT Rules *in fine*, according to which the Arbitrator applies “*general considerations of justice and fairness without reference to any particular national or international law*”.
70. In light of the foregoing considerations, the Arbitrator makes the findings below.

6.2. Findings

71. It is established by the evidence on record that:
- Under the terms of the Main Agreement the Player was guaranteed payment by

² That is the Swiss statute that governed international and domestic arbitration before the enactment of the PILA. Today, the Concordat governs exclusively domestic arbitration.

³ P.A. Karrer, Basler Kommentar, No. 289 ad Art. 187 PILA.

⁴ JdT 1981 III, p. 93 (free translation).



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the Club of a total salary of EUR 400,000 net of tax by the end of the 2008-2009 season.

- For his services rendered throughout that season, the Player only received a total remuneration of EUR 212,500 (EUR 150,000 from the Club directly and EUR 62,500 via Krisken), leaving an unpaid balance of EUR 187,500 out of the total amount guaranteed under the Main Agreement.
72. Consequently, unless the existence of relevant objections linked to the terms of the Main Agreement is established and/or reasons of fairness so require, the claim for the outstanding amount indicated above must be admitted.
73. With regard to the Player's claim for the payment of a total amount of outstanding salary of EUR 187,500, the Club has not invoked any actions and/or breaches by the Player that would contractually justify the non-payment of that balance of the guaranteed salary of EUR 400,000 for the season 2008-2009.
74. Instead, the Club is arguing in essence that the balance of the Player's salary was to be paid by a third party (Krisken) under the License Agreement – in accordance with the schedule of payments contained therein – and is therefore not owed by the Club.
75. Having accepted jurisdiction for the reasons indicated above, the Arbitrator finds that from a contractual perspective the terms of the Main Agreement are sufficient to entitle the Player to claim the entire amount owed to him on the basis of that contract alone, since it unambiguously derives from its terms that the Club has the obligation to fully guarantee the Player's total salary of EUR 400,000 by the end of the 2008-2009 season at the latest.
76. The provision of a payment schedule in other contracts and the fact that certain payments would be made via a third party do not detract from the fact that the Club's



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main obligation – i.e. to guarantee payment of the total amount of salary by the end of the 2008-2009 season at the latest – remains under the Main Agreement with respect to whatever sums are unpaid at the end of the stipulated season.

77. Furthermore, if the Club has no justified reasons of substance not to pay the Player – which the Arbitrator finds to be the case here, since the Club has not even alleged any breach of contract by the Player – considerations of justice and fairness prevent the Club from invoking the existence of the other contracts as a formal pretext for not paying the total remuneration it guaranteed under the Main Agreement.
78. Consequently, the Player's request for payment of EUR 187,500 shall be awarded.
79. With respect to the Club's counterclaim, it is relevant that according to article 3.2 of the Main Agreement "*Any uninsured liability will be the sole responsibility of the CLUB. The CLUB except for gasoline, oil change, parking and cleaning the automobile, as well as driving fines, will pay all maintenance expenses of the automobile*" and that according to article 3.3 "*The use of the telephone and the cleaning of the apartment will be at the PLAYER's expense*". Accordingly, it would not be fair or just to allow any part of the counterclaim for expenses concerning the apartment (apart from the cleaning bill which must be footed by the Player). Therefore, that part of the counterclaim will be rejected. However, the cost of cleaning the car (EUR 25) can be recovered in accordance with what the Main Agreement provides.
80. Concerning the traffic violations, the Arbitrator finds that the detailed chronological list of violations with the corresponding fines – which contrary to what the Player invokes is largely in English – can be deemed sufficient evidence of their existence in the present case and that there is no reason to consider that the Club did not pay the corresponding amounts instead of the Player. Furthermore, the disbursements made to pay fines in a total amount of EUR 1,461.68, as well as the cost of cleaning the apartment (EUR 180) and the car (EUR 25) fall into the categories of expenses that the



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Player is deemed to cover under articles 3.2 and 3.3 of the Main Agreement and there are no reasons of fairness not to award the Club its request for reimbursement of those costs.

81. Consequently, the counterclaim will be admitted in the amount of **EUR 1,666.68**, covering the costs of the driving fines and of cleaning the apartment and the car.

7. Costs

82. Article 19 of the FAT Rules provides that the final amount of the costs of the arbitration shall be determined by the FAT President and that the award shall determine which party shall bear the arbitration costs and in what proportion; and, as a general rule, shall grant the prevailing party a contribution towards its reasonable legal fees and expenses incurred in connection with the proceedings.
83. On 20 August 2010 - considering that pursuant to Article 19.2 of the FAT Rules "*the FAT President shall determine the final amount of the costs of the arbitration which shall include the administrative and other costs of FAT and the fees and costs of the FAT President and the Arbitrator*", and that "*the fees of the Arbitrator shall be calculated on the basis of time spent at a rate to be determined by the FAT President from time to time*", taking into account all the circumstances of the case, including the time spent by the Arbitrator, the complexity of the case and the procedural questions raised - the FAT President determined the arbitration costs in the present matter to be EUR 7,600.00.
84. Considering, on the one hand, that the Claimant entirely prevailed in his claim, and considering, on the other hand, the small amount of the counterclaim and the absence of evidence on record that the corresponding costs were ever previously requested from the Player, it is fair that the fees and costs of the arbitration be borne by the Club



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and that it be required to cover its own legal fees and expenses as well as those of the Claimant, the latter being reasonable in amount.

85. Given that the Claimant paid advances on costs of EUR 9,000.00 as well as a non-reimbursable handling fee of EUR 3,000.00, while the Club paid an advance on costs of EUR 3,000.000 the Arbitrator decides that in application of article 19.3 of the FAT Rules:

- (i) FAT shall reimburse EUR 4,400.00 to the Claimant, being the difference between the costs advanced by the Parties and the arbitration costs fixed by the FAT President;
- (ii) The Club shall pay EUR 4,600.00 to the Claimant, being the difference between the costs advanced by him and the amount he is going to receive in reimbursement from the FAT;
- (iii) The Club shall pay to the Claimant EUR 12,838.83 (9,838.83 + 3,000.00) representing the amount of his legal fees and other expenses.



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8. AWARD

For the reasons set forth above, the Arbitrator decides as follows:

1. Fortitudo Pallacanestro Societa' Sportiva Dilettantistica a R.L. shall pay Mr. Lazaros Papadopoulos an amount of **EUR 187,500.00**, net of taxes, as compensation for unpaid salary payments.
2. Mr. Lazaros Papadopoulos shall pay Fortitudo Pallacanestro Societa' Sportiva Dilettantistica an amount of **EUR 1,666.68**, as compensation for its costs incurred for driving fines and the cleaning of the apartment and of the car.
3. Fortitudo Pallacanestro Societa' Sportiva Dilettantistica a R.L. shall pay Mr. Lazaros Papadopoulos an amount of **EUR 4,600.00** as reimbursement for his arbitration costs.
4. Fortitudo Pallacanestro Societa' Sportiva Dilettantistica a R.L. shall pay Mr. Lazaros Papadopoulos an amount of **EUR 12,838.83** as reimbursement for his legal fees and expenses.
5. Any other or further requests for relief are dismissed.

Geneva, seat of the arbitration, 31 August 2010

Quentin Byrne-Sutton
(Arbitrator)



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Notice about Appeals Procedure

cf. Article 17 of the FAT Rules

which reads as follows:

"17. Appeal

Awards of the FAT can only be appealed to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland and any such appeal must be lodged with CAS within 21 days from the communication of the award. The CAS shall decide the appeal *ex aequo et bono* and in accordance with the Code of Sports-related Arbitration, in particular the Special Provisions Applicable to the Appeal Arbitration Procedure."