FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

ARBITRAL AWARD

(0118/10 FAT)

by the

FIBA ARBITRAL TRIBUNAL (FAT)

Mr. Quentin Byrne-Sutton

in the arbitration proceedings between

Mr. Christopher Nathaniel Bracey,

Represented by Mr Pantelis Dedes,
Dedes - Makroglou and Associates, 2 Xanthou Str., 10673 Athens, Greece

- Claimant -

vs.

Achilleas Kaimakliou B.C.,
N.Th. Ioannou 7, Kaimakli, Nicosia, Cyprus

Represented by Mr. Andreas D. Koromias, Diagorou 4, 1097 Nicosia, Cyprus

- Respondent -

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1. The Parties

1.1. The Claimant

1. Mr. Christopher Bracey (hereinafter also referred to as “the Player”) is an American professional basketball player, who began the 2009-2010 season playing for the basketball club Achilleas Kaimakliou B.C.

1.2. The Respondent

2. Achilleas Kaimakliou B.C. (hereinafter also referred to as “the Club”) is a professional basketball club competing in the Cypriot professional basketball league.

2. The Arbitrator

3. On 7 September 2010, 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 22 July 2009, the Player and the Club entered into an agreement whereby the latter engaged the Player for the season 2009-2010 (the “Agreement”).

5. Upon signing the Agreement, the Player was represented by two agents, Mr. Dejan Lakicevic and Mr. Darryl Woods.

6. Article II of the Agreement provides that

> "*The terms of this agreement shall be deemed to have commenced on the date of signature of this agreement and shall continue for the period covering the 2009-2010 basketball seasons*".

7. Article III of the Agreement provides that it is a "… *guaranteed … no-cut agreement for the 2009-2010 season*" and that the Club is not entitled to terminate the Agreement "… *should any injury befall the Player or in event the Player fails to reach an expected level of performance*".

8. Article IV of the Agreement stipulates that "*The Club agrees to pay the Player a guaranteed net salary of $ 49,000 (USD forty nine thousand) for the 2009-2010 season*", such salary to be paid in eight installments according to a schedule of payments running between 15 September 2009 (first installment) and 15 April 2010 (last installment).

9. Article IV also provides for the following remedies in case of late payments by the Club:

> "*In case of scheduled payments not being made by the Club within 10 (ten) days of the scheduled payment, the Player shall be entitled to all moneys in accordance with the Contract, but shall not have to perform in practice sessions or games until all scheduled payments have been made and such nonperformance will not be considered a breach of contract. In the event the payments are not made by Club, within 15 (fifteen) days of the scheduled payment date, player shall immediately be entitled to the full salary and shall have no further obligations to the Club. The Club shall retain no further rights to the Player except for the obligation to pay all salary and bonuses under the terms of this Contract …*"

10. With respect to insurance coverage for medical expenses and the cost of medical care, article VIII provides that

> *"… the Club agrees to provide the Player with the following amenities at no cost to the*

Player for the duration of the Contract: […] d) Insurance and medical care for the Player and his family. If the Player is injured or ill at any time during the term of this contract and unable to continue play, all moneys are still due and payable plus any medical expenses incurred because of the injury or illness".

11. Regarding the events which occurred after the Player arrived in Cyprus in September 2009, the Player and the Club agree only on the following facts:

- Upon his arrival the Player was paid a first salary installment in EUR in an amount equivalent to the USD 3,500 due to him according to the Agreement.

- On 13 October 2009, during a pre-season game, the Player was injured, with the consequence that he had to undergo surgery in Cyprus on 28 October and was then in a cast and on crutches for a number of weeks before beginning his rehabilitation treatment.

- On 10 November 2009, the Club paid him a further sum in EUR corresponding to the USD 7,000 due to him as his October salary under the Agreement.

- Thereafter, the Player received no further salary payments from the Club, meaning that out of the entire salary of USD 49,000 stipulated in the Agreement for the 2009-2010 season, a total amount of USD 38,500 in salary was not paid (USD 49,000 – 10,500 = 38,500).

- Upon his arrival in Cyprus, the Player had been lodged in a hotel and due to the pre-season injury was never provided with the housing accommodation foreseen in the Agreement.

12. According to the Player, it is in breach of the Agreement that the Club did not pay the contractual balance of salary of USD 38,500, and in that connection he alleges the following regarding the chronology of events:

- Despite being placed provisionally in a hotel by the Club upon his arrival, he was never offered the apartment, the car and the daily meals provided for in the Agreement.

- After his surgery at the end of October 2009, he was in a cast for 3 weeks and then, until the beginning of February, in a boot that hindered normal walking.

- Thereafter, he began rehabilitation, which lasted until April 2010.

- Having been paid his October salary on 10 November, the Player spoke to the Club management (specifically, to a certain Mr. Thomas, General Manager) after leaving the hospital, indicating that he considered himself entitled to his entire salary for the season as well as the coverage of his medical costs, while also stating that he would not request the apartment, meals or the plane tickets provided for under the Agreement.

- Despite promises that the matter would be discussed shortly with the Club's committee, he never heard back from anyone regarding his proposition. He was simply told to be patient because the Club was having financial difficulties.

- As a result, on 18 December 2009 his American agent prepared a draft letter of notice to the Club stating, among others, that: *"…Mr Bracey is still owed his salary due to him November 15th, 2009 and December 15th, 2009. In addition to any bonuses that may have earned per each team win"* and *"*[…] *Our client and our office must take appropriate action if Achilleas Kaimakiou (sic), Cyprus does not immediately resolve its continued breach of its contractual obligations…*".

- However, the "*above-mentioned letter was not immediately delivered to the*

President of the Club due to the fact (a) that the Player received some promises for a settlement, (b) was not able to meet the President and (c) was not willing to threaten them with legal actions".

- On 20 February 2010, he sent his two agents an email summarizing the reasons for which he still needed their help to put the Club on written notice that his salaries and medical costs remained outstanding and that he would sue the Club in front of the FAT if it ignored his demands.

- Thereafter, he delivered the initial letter of notice to Mr. Nikolas Papadopoulos, head coach of the Club, since "…*after two months, it was clear that they will not oblige by the contract … That delivery was made on February 26, after AEL defeated Achilleas 64-58, with the purpose to be forwarded to the President of the Club, who was not present at the game and whom the Player was not ever able to meet*".

- During the period following his operation up until April 2010 he remained in Cyprus and then returned to his hometown, Chicago. During that period he did not sign a contract with any other basketball club.

13. In support of his foregoing version of the facts, the Player filed a copy of the notice letter of 18 December 2009 (allegedly remitted to the Club on 26 February 2010), a copy of an email of 20 February 2010 he allegedly sent to his two agents and an affidavit dated 24 November 2010 signed by his brother Bryan Bracey, also a professional basketball player, with whom he allegedly had regular telephone conversations about the situation at the time of the facts.

14. Furthermore, the Player considers the Club did not meet its obligation to cover his medical costs since he incurred various medical expenses as a result of the injury to

his Achilles tendon that were not reimbursed by the Club. In that respect, he claims that the Club owes him "*… the amount of (a) 280€ (Euros) for an ancle (sic) brace – as the #7312/18.11.2009 invoice and (b) 1,710€ (Euros) for fifty seven sessions of physiotherapy for post-operative rehabilitation of Achilles tendon from 01/02/2010 until 28/04/2004 as the # 222215/16/07/2010 invoice …*".

15. Consequently, and absent any further payments by the Club despite the notice letter, the Player decided to file a request for arbitration to claim the total amount of salary for the 2009-2010 season outstanding under the terms of the Agreement, i.e. a sum of USD 38,500, and the reimbursement of the foregoing medical costs.

16. The Club contests the Player's version of the facts and underlines contradictions in his statements.

17. According to the Club, on 6 November 2009, the Player's agent made the following declaration, "*I, Dejan Lakisevic, FIBA Certified Agent and President of DELTA BASKET SERVICE, declare that my office will not take any appropriate legal action in Cyprus Court for legal redress and/or FIBA Arbitral Tribunal (FAT) according to the contract between BC Achilleas and Chris Bracy (sic) for the season 2009-2010*", which corresponded to an undertaking made on behalf of the Player in exchange for the Club's undertaking to make one more salary payment equivalent to USD 7,000 in November 2009. That salary was paid on 10 November 2009 when the Player visited the Club's offices.

18. The Club considers that the alleged foregoing arrangement amounted to a termination agreement whereby the Parties consensually liquidated their relationship, meaning that neither party would have any further claims against the other. In that connection, the Club alleges that it has covered all of the Player's medical expenses and that the Player left the Club in November 2009 while he was still living in the hotel and without ever claiming that any salary or other payments were outstanding or ever

communicating again with any person or official of the Club.

19. In support of its allegations, the Club filed a copy of the declaration of 6 November 2009 of the agent Dejan Lakisevic, a copy of an invoice dated 3 December 2009 relating to treatment at Achillion Hospital on 27 October 2009 and an affidavit by the Secretary of the Club, Demetres Siammas. The Club also mentions it attempted to obtain a witness statement from Dejan Lakisevic but that he refused to provide one.

20. The Player however contests that the declaration allegedly made in November 2009 by the agent Dejan Lakisevic was made under the Player's instructions or with his consent and that it represents a termination agreement with the Player or is binding upon him in any manner.

3.2. The Proceedings before the FAT

21. On 20 August 2010, the Player filed a Request for Arbitration in accordance with the FAT Rules and duly paid the non-reimbursable handling fee of EUR 2,000.

22. On 2 September 2010, counsel for the Claimant informed the FAT Secretariat that he wished to "strike out point 4" of his request for relief (see paragraph 40 below).

23. On 7 September 2010, 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:

"Claimant (Mr. Bracey)	*€ 3,000*
Respondent (Achilleas Kaimakliou)	*€ 3,000"*

24. On 21 and 22 September 2010 respectively, the Claimant and the Respondent each paid their part of the foregoing advance on costs.

25. On 4 October 2010, the Club submitted its Answer to the Request for Arbitration.

26. By procedural order of 11 October 2010, the FAT informed the Parties that a second exchange of briefs was required.

27. On 22 October 2010, the Player filed his comments on the Answer of the Club.

28. On 5 November 2010, the Club filed its reply to the Player's comments.

29. By procedural orders of 12 and 15 November 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 and file further written evidence.

30. On 3 December 2010, the Player submitted his answers to the Arbitrator's questions and filed related documents.

31. By email of 8 December 2010, the Club was given the opportunity to file comments on the Player's answers.

32. On 29 December 2010, the Club submitted its observations on the Player's answers and documents.

33. By procedural order of 27 January 2011, the Player was requested to re-submit copies of the two invoices relating to the medical expenses being claimed.

34. On 3 February 2011, the Club submitted its observations relating to the two invoices in question.

35. On 9 February 2011, the Parties were invited to submit their statements of costs.

36. On 15 and 16 February 2011, Claimant and Respondent respectively submitted their statements of cost.

37. On 18 February 2011, the Parties were given the opportunity to file comments on the statement of costs of the other party.

38. Neither party commented on the statement of costs of the other.

4. The Positions of the Parties

4.1. The Claimant's Position

39. The Player submits the following in substance:

- By not paying the entire contractually-agreed salaries for the 2008-2009 season or all his medical expenses, despite him 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 USD 49,000 stipulated in the Agreement and the USD 10,500 received by the Player, i.e. a balance of USD 38,500 - and for the payment of outstanding medical expenses in an amount of EUR 1,990.

40. In his Request for Arbitration dated 20 August 2010, the Player requested the following relief, although the amount claimed under items 1) and 2) below was subsequently reduced to the amount mentioned above (USD 38,500):

> *"Request for Relief*
> *The Claimant hereby requests FAT to:*
> *1) Hold that the Respondent owes to the Player the amount of 41,800 usd.*

2) *Order the Respondent to pay to the Claimant the amount of 41,800 usd for rendered services, with interest rate of 5% or in the alternative with the interest rate decided by the FAT Arbitrator ex aequo et bono, as follows: 1) 7,000 usd for the payment due on 15 November 2009, 2) 7,000 usd for the payment due on 15 December 2009, 3) 7,000 usd for the payment due on January 2010, 4) 7,000 usd for the payment due on 15 February 2010, 5) 7,000 usd for the payment due on 15 March 2010 and 6) 7,000 usd for the payment due on 15 April 2010.*

3) *Order the Respondent to pay to the Claimant the amount of 1,990 € (Euros) or the equivalent in Usd at the payment date for medical expences (sic) with interest rate of 5% or in the alternative with the interest rate decided by the FAT Arbitrator ex aequo et bono, as from April 28, 2010 (ending of the rehabilitation sessions).*

4) *Order the Respondent to pay to the Claimant the amount of …*[1] *for compensation, with interest rate of 5% or in the alternative with the interest rate decided by the FAT Arbitrator ex aequo et bono, as from 12 February 2008.*

5) *Hold that the costs of the present arbitration be borne by the Respondent alone.*

6) *Order the Respondent to reimburse the Claimant the arbitration fee as well as his legal fees and other expenses, to be ascertained."*

4.2. Respondent's Position

41. The Club initially argued that the FAT arbitrator lacked jurisdiction because the Agreement containing the FAT arbitration clause was allegedly not signed, and submitted that for the same reason the Agreement was not valid under the applicable Cyprus employment law, as it did not qualify as a written agreement.

42. However, after being presented with a signed version of the Agreement, the Club withdrew its challenge to the jurisdiction of the FAT and thus its argument that the agreement was not in writing as required by Cyprus law.

43. For the rest, the Club submits the following in substance:

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[1] This item of the claim was never completed, i.e. was left blank and was withdrawn on 2 September 2010, see para. 22.

- "… [The Agreement] *was terminated by mutual consent after an agreement between the Club and the Player's Representative Mr. Dejan Lakicevic and the Player received full payment*".

- Without prejudice to the foregoing argument, … "*alternatively the Club claim that the Player was never released by the Club and he left Cyprus and/or disappear without consent from the Club and/or terminating his contract and therefore the behaviour of the Player constitutes a breach of the Parties alleged Contract (by conduct) due to the player's fault".*

- Furthermore, the Player has not met his burden of proof with respect to the facts he is relying on to claim the allegedly outstanding payment of salaries and medical costs.

- With respect to the medical costs, there is an undated prescription for medicines without proof that they were paid for by the Player, and the place and date of issuance of the invoices for the ankle brace and for the physiotherapy demonstrate "… *that the Claimant left the Club and stayed in Limassol, away from the Club and without being in contact with the Club or its Representatives. He never attended the Club's trainings and/or was kept in conduct (sic) with the Club and/or acted in any way as being a player of the Club and/or otherwise. The Claimant's behaviour constitutes a breach of the contract* ...".

- The Player cannot be entitled to the payment of any amount and the claim must be rejected.

5. The jurisdiction of the FAT

44. 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).

45. The jurisdiction of the FAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.

46. 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) PILA[2].

47. The jurisdiction of the FAT over the dispute results from the arbitration clause contained under article XII of the Agreement, which reads as follows:

> *"In case of disputes on the present Agreement the parties will take all measures to solve them by negotiations. If the dispute between the parties is not resolved by way of negotiations then it should be resolved in accordance with the FIBA Arbitral Tribunal (FAT) as follows:*
>
> *Any dispute arising or related to the present contract shall be submitted to the FIBA Arbitral Tribunal (FAT) in Geneva, Switzerland and shall be resolved 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. The arbitration shall be governed by Chapter 12 of the Swiss Act on Private International Law (PIL), irrespective of the parties' domicile. The language of the arbitration shall be English. Awards of the FAT can be appealed to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland. The parties expressly waive recourse to the Swiss Federal Tribunal against awards of the FAT and against decisions of the Court of Arbitration for Sports (CAS) upon appeal, as provided in Article 192 of the Swiss Act on Private International Law. The arbitrator and CAS upon appeal shall decide the dispute ex aequo et bono. In the event that a party to a FAT Arbitration fails to honour a final award (the "first party") of FAT or of the Court of Arbitration for Sport upon appeal against a FAT award, the party seeking enforcement of such award (the "second party") shall have the right to request that FIBA sanction the first*

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

party. The following sanctions can be imposed by FIBA:

a. monetary fine of up to € 100,000.00 (Euro onehundredthousand/00); this fine can be applied more than once: and or:
b. withdrawal of FIBA-license if the first party is a player's agent;
c. a ban on international transfers if the first party is a player/coach;
d. a ban on registration of new players if the second party is a Club."

48. The Agreement is in written form and thus the arbitration agreement fulfills the formal requirements of Article 178(1) PILA.

49. 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).

50. The jurisdiction of FAT over the Player's claim arises from the Agreement. The wording "[a]*ny dispute arising from or related to the present contract* …" clearly covers the present dispute. Furthermore, the Club expressly withdrew in its second submission the objection to FAT jurisdiction it had raised in its initial Answer to the Request for arbitration, by declaring: "*The Club does not wish to challenge any more the jurisdiction of FAT*".

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

6. Discussion

6.1. Applicable Law – *ex aequo et bono*

52. 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".*

53. 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."*

54. Article XI of the Agreement provides that: "*The laws of Cyprus shall govern this Agreement*". However, as seen above, article XII of Agreement stipulates that: "*[t]he arbitrator and CAS upon appeal shall decide the dispute ex aequo et bono*". It is therefore a matter of interpretation of the Agreement to determine how deciding the dispute *ex aequo et bono* pursuant to article XII fits with the reference to the laws of Cyprus in article XI.

55. 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 Cyprus) 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' obligations under the Agreement would be decided *ex aequo et bono* if submitted to the FAT.

56. Consequently, the Arbitrator shall decide *ex aequo et bono* the issues submitted to him in this proceeding.

57. 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'arbitrage[3] (Concordat)[4], 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."*[5]

58. 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*".

59. In light of the foregoing considerations, the Arbitrator makes the findings below.

6.2. Findings

60. It is undisputed between the Parties that an amount of salary USD 38,500 provided for in the Agreement was never paid by the Club to the Player.

61. With respect to that part of the claim, the only question that arises is therefore whether the Club had any legitimate reason not to pay such balance of the contractual salary.

62. The Club invokes two motives for not paying, namely that (i) by means of Mr. Dejan Lakicevic's declaration of November 2009 the Player renounced the right to receive any further payments from the Club since, in effect, the declaration constituted a form of termination/settlement agreement engaging the Player, and (ii) in any event, the

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3 That is the Swiss statute that governed international and domestic arbitration before the enactment of the PILA (governing international arbitration) and, most recently, the Swiss Code of Civil Procedure (governing domestic arbitration). .

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

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

Player is precluded from claiming any outstanding salaries because he abandoned the Club and violated his contractual obligations.

63. With regard to the two foregoing allegations, the Club has the burden of proof and the Arbitrator considers that the facts invoked have not been established.

64. The wording of the declaration by Mr. Dejan Lakicevic does not necessarily imply that the Player himself has renounced making any claims against the Club, and there is no indication that Mr. Lakicevic made this declaration on behalf of the Player or was entitled to do so.

65. At that stage in the relationship, in November 2009 – when the Player had just undergone surgery due to an injury suffered in a pre-season game – and given that the Agreement was a fully-guaranteed no-cut contract which specifically guaranteed that the Player would receive his full season's salary even if he sustained an injury, it is difficult to understand the reason why the Player would have proposed/accepted an alleged termination agreement of the sort, which was to his entire disadvantage.

66. Thus, even if Mr. Dejan Lakicevic was one of the Player's representatives, the Club could not in good faith believe that his declaration was not only made for his own sake but also on behalf of the Player, without verifying that fact with the Player, whereas the Club declares it had no contact with the Player at that stage. On the basis of the evidence adduced by the Club, it is not possible to know Mr. Dejan Lakicevic's reasons for making such a declaration and whether, for example, there was any link with the payment of agency fees. According to the Club, Mr. Lakicevic has refused to provide a clarifying statement.

67. For the above reasons, the Arbitrator finds that the existence of a termination/settlement agreement engaging the Player has not been established.

68. With respect to the allegation that the Player abandoned the Club and violated his contractual obligations, the Arbitrator finds that evidence is also lacking.

69. Although the Club is today making those reproaches, it has not adduced any evidence contemporary to the facts invoked, such as complaints, notices, etc. or communications in any form, which would indicate that the Club ever tried (successfully or unsuccessfully) to contact the Player or ever complained about his behaviour in any manner, or asked him to be present at any of the Club's activities or at its premises. Also, by the Club's own admission, the Player was never lodged in an apartment rented by the Club, as envisaged by the Agreement, but was kept instead in a hotel room, and there is no evidence of any attempt to integrate the Player in the life of the Club despite his injury. At the same time, given the relative seriousness of the Player's injury, which was to keep him off the courts for several months, it is not clear what the Club expected of him during his period of recovery and therefore which of his contractual obligations he would have violated. Thus, the Arbitrator holds that the Club has not met its burden of proof in that respect.

70. The Arbitrator finds that the fact that the Player apparently purchased his ankle brace and undertook his physiotherapy for rehabilitation in a different town (Limassol) from where the Club is located and may have been staying with his brother during the period between November 2009-April 2010 does not constitute evidence that he "abandoned" the Club, since being injured there was no reason for him to live nearby the Club. On the contrary, this confirms that the Player did not leave Cyprus and that if the Club had wished to see him for any reason, it would have been able to do so. However, there is no evidence that the Club ever asked the Player for any form of service during that period.

71. Concerning the Player's allegations, some of them are somewhat contradictory (e.g. regarding whether he left Cyprus in mid-April or at the end of that month and

concerning whether he actually complained/talked to the Club's President), and the evidence adduced of his complaints and notices requesting payment are not entirely convincing in form. However, the Arbitrator finds that those factors do not amount to establishing that the Player somehow forfeited or gave up his rights under the Agreement. In other words, the fact that his complaints were perhaps feeble and are not clearly established is not sufficient in itself to be deemed a forfeiture of the right to payment of the full season's salary and of medical fees, since that right was guaranteed under the Agreement and he had no apparent reason to forego it.

72. For the above reasons, the Arbitrator finds that there is no established contractual motive or any reason of fairness or justice for which the Player should not be entitled to claim the outstanding payments due to him under the fully-guaranteed no-cut Agreement, and the sum of USD 38,500 being claimed will therefore be awarded.

73. In relation to the expenses of EUR 1,990 claimed by the Player for a brace and for part of his rehabilitation treatment, there is no reason to believe that such costs were not linked to the injury he suffered when playing the pre-season game under the terms of the Agreement, while at the same time article VIII d) of the Agreement provides that the Club shall cover: "… [i]*nsurance and medical care for the Player and his family"*, and that *"[i]f the Player is injured or ill at any time during the term of this contract and unable to continue play, all moneys are still due and payable plus any medical expenses incurred because of the injury or illness*". Consequently, and because the injury occurred and the treatment in question was sought during the term of the Agreement (indeed, the invoice for the physiotherapy also specifically indicates that it was for "*Post-Operative Rehabilitation*"), there is no reason, whether under the contract or according to fairness and justice, for the Club not to reimburse those expenses. The Player's claim for EUR 1,990 must therefore succeed.

74. The Player is also requesting the payment of interest on the sums owed at an annual

rate of 5%.

75. Although the Agreement does not regulate interest for late payments, it is a generally recognized principle embodied in most legal systems, which is underpinned by motives of equity, that late payments give rise to interest – in order that the creditor be placed in the financial position she/he would have been in had payments been made on time. Consequently and despite the Agreement not specifying an interest rate, it is normal and fair that interest is due on the late payments. Since the Player has invoked an interest rate of 5%, which in this case seems fair and reasonable and is in line with FAT jurisprudence, interest will be awarded at that rate.

76. It is an established principle that interest runs from the day after the date on which the principal amounts are due.

77. Consequently, it is fair that, with respect to the unpaid contractual monthly instalments making up the total of USD 38,500 owed to the Player, interest on each salary instalment provided in the schedule of payments under article IV of the Agreement be deemed to run from the day after the due date contractually stipulated for each instalment.

78. With respect to the reimbursement of the medical expenses, because the invoices were issued quite late and therefore apparently not claimed from the Club before the Request for arbitration was filed, it is fair that interest only begin to run 30 days beyond the date of filing of the Request, i.e. from 20 September 2010 onwards.

7. Costs

79. Article 17 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.

80. On 21 March 2011 - considering that pursuant to Article 17.2 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 5,450.00.

81. Considering, that the Claimant entirely prevailed in his claim, it is fair that the fees and costs of the arbitration be borne by the Club 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.

82. Given that the Claimant paid advances on costs of EUR 3,000.00 as well as a non-reimbursable handling fee of EUR 2,000.00 (which will be taken into account when determining the Claimant's legal fees and expenses), while the Club paid an advance on costs of EUR 3,000.00, the Arbitrator decides that in application of article 17.3 of the FAT Rules:

    (i) FAT shall reimburse EUR 550.00 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 2,450.00 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 6,500.00 (2,000.00 for the non-reimbursable fee + 4,500.00 for legal fees) representing the amount of his legal fees and other expenses.

8. AWARD

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

1. **Achilleas Kaimakliou B.C. shall pay Mr. Christopher Nathaniel Bracey as follows a total amount of USD 38,500, net of taxes, as compensation for unpaid salary payments:**

   - **USD 7,000, plus interest at 5% per annum on such amount from 16 November 2009 onwards.**

   - **USD 7,000, plus interest at 5% per annum on such amount from 16 December 2009 onwards.**

   - **USD 7,000, plus interest at 5% per annum on such amount from 16 January 2010 onwards.**

   - **USD 7,000, plus interest at 5% per annum on such amount from 16 February 2010 onwards.**

   - **USD 7,000, plus interest at 5% per annum on such amount from 16 March 2010 onwards.**

   - **USD 3,500, plus interest at 5% per annum on such amount from 16 April 2010 onwards.**

2. **Achilleas Kaimakliou B.C. shall pay Mr. Christopher Nathaniel Bracey a total amount of EUR 1,990, as compensation for non-reimbursed medical expenses, plus interest at 5% per annum on such amount from 20 September 2010 onwards.**

3. **Achilleas Kaimakliou B.C. shall pay Mr. Christopher Nathaniel Bracey an amount of EUR 2,450.00 as reimbursement for his arbitration costs.**

4. **Achilleas Kaimakliou B.C. shall pay Mr. Christopher Nathaniel Bracey an amount of EUR 6,500.00 as reimbursement for his legal fees and expenses.**

5. **Any other or further requests for relief are dismissed.**

Geneva, seat of the arbitration, 23 March 2011.

Quentin Byrne-Sutton

(Arbitrator)