



**Arbitration CAS 2011/A/2603 S.C. Fotbal Club CFR 1907 Cluj SA v. Romanian Football Federation (RFF) and Sporting Club Association F.C. Viorel Mateianu, award of 4 September 2012**

Panel: Mr Hendrik Willem Kesler (The Netherlands), Sole arbitrator

*Football*

*Transfer agreement*

*Validity of an additional agreement and of a debt assignment*

*Lack of legal standing of a third party*

1. **The burden of proof regarding the validity of an additional agreement whereby a club renounced to any further claim regarding the transfer of a player is on the side of the party who actually claims that said agreement which is duly registered with the national professional league, duly signed and has been held valid by the competent national federation’s judicial bodies, is false. If the party cannot discharge its burden, the agreement is perfectly valid and there is no debt anymore between the two clubs parties to the agreement. Therefore the debt assignment concluded between that party and a third club is to be considered as null and void because it lacks any legal substance.**
  
2. **Facing a claim from a non-contractual third party would only be acceptable if any sound legal basis could be found for this, such as for example a debt assignment. As the existence of an agreement like this could not be proven, there is no legal basis for a direct claim from a non-contractual third party.**

**1. THE PARTIES**

- 1.1. S.C. Fotbal Club CFR 1907 Cluj SA (“FC Cluj” or the “Appellant”) is a Romanian football club, currently playing in the top division of the Romanian league. FC Cluj is affiliated to the Romanian Football Federation.
- 1.2. The Romanian Football Federation (“RFF” or the “First Respondent”) is the national governing body for the sport of football in Romania. It is a member of the Fédération Internationale de Football Association (FIFA) since 1923.
- 1.3. Sporting Club Association F.C. Viorel Mateianu (“FC Viorel” or the “Second Respondent”) is a Romanian football club, currently playing in the 4<sup>th</sup> league in Romania. It appears that on 5 October 2011, FC Viorel ceased to be affiliated to the RFF.

## **2. FACTUAL BACKGROUND**

- 2.1. Below is a summary of the main relevant facts as established on the basis of the written submissions of the parties and the evidence examined in the course of the proceedings. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.
- 2.2. On 3 March 2007, Fotbal Club Baia Mare S.A. (“FC Baia Mare”, not a party to these proceedings) and the Second Respondent entered into a transfer agreement regarding the football player P. (the “Player”), whereby the Player moved from the Second Respondent to FC Baia Mare. The said transfer agreement provides that: *“FC Baia Mare undertakes the commitment to give up 50% of the amount obtained after a possible transfer of the player to another team to the club FC Viorel Mateianu...”*.
- 2.3. On 6 July 2009, FC Baia Mare and the Appellant entered into a transfer agreement regarding the Player, which provided that the Appellant would pay FC Baia Mare a transfer fee of EUR 40,000 plus an additional amount of EUR 100,000, should the Player take part in more than 10 matches with the Appellant’s first team. The transfer fee of EUR 40,000 was paid by the Appellant.
- 2.4. The Appellant alleges that on 23 October 2009, FC Baia Mare and the Appellant signed a second agreement whereby FC Baia Mare renounced any further claims regarding the transfer of the Player in exchange for the release of another player.
- 2.5. The Second Respondent alleges that on 1 June 2010, FC Baia Mare and the Second Respondent entered into an agreement whereby FC Baia Mare assigned its debts to the Second Respondent in the following terms: *“The object of the present contract is the debt of EUR 70,000 + VAT, representing the percentage of 50% of the transfer of the player P. ...”*.

## **3. PROCEEDINGS BEFORE THE ROMANIAN FOOTBALL FEDERATION (RFF)**

- 3.1. The Second Respondent brought a claim before the RFF National Dispute Resolution Chamber (NDRC) against the Appellant seeking payment of EUR 70,000, representing 50% of the transfer of the Player. The NDRC dismissed the Respondent’s claim for lack of active legal standing.
- 3.2. The Second Respondent appealed to the RFF Board for Appeal, which appeal was upheld and the Appellant was ordered to pay the Second Respondent EUR 50,000 (the “Challenged Decision”).
- 3.3. The Challenged Decision was issued on 29 September 2011 by the Romanian Football Federation Board for Appeal.
- 3.4. The Challenged Decision provides (brief summary):

*“Seen as the initial Agreement (registered with the Romanian Football Federation under no. 3714 of 1 November 2007), based on which arose the right of the claimant, was not cancelled nor modified, it cannot be concluded that the claimant has lost its quota of 50% of the amounts resulting from the transfer of the player P. from F.C. Baia Mare to F.C. C.F.R. 1907 Cluj (par. 2 of the Agreement and art. 4 of the Transfer Agreement registered with the Romanian Professional Football League under no. 2458 of 14 July 2009).*

*The irrevocable waiver of the financial rights (EUR 100,000) stipulated in art. 4 of said Transfer Agreement can only produce effects with respect to the 50% portion due to S.C. F.C. Baia Mare S.A. because based on the previous agreement of 2007 (which was not made void), this club could not dispose of the rights of C.S. F.C. Viorel Mateianu without the approval of the latter.*

*Furthermore, C.S. F.C. Viorel Mateianu, by keeping its capacity as creditor of S.C. Baia Mare S.A., has the capacity to act as claimant in the case, even in the absence of the Debt Assignment Agreement.*

*In order to avoid any prejudice to its assets, the claimant may exercise directly any and all actions (for its share) that its debtor, F.C. Baia Mare S.A., had the right to take, that the latter waived out of negligence or in bad faith – actions against third parties that owed it money, namely, in this case, F.C. C.F.R. 1907 Cluj, and therefore it legitimately has the right to file a claim.*

*From this point of view as well, the waiver of the entirety of the rights, including those of the claimant, without its approval, is not valid, as it was erroneously shown.*

*As a consequence, the petition for review shall be accepted and the Decision no. 322 of 26 July 2011 pronounced by the National Dispute Resolution Chamber of F.R.F. shall be partially amended.*

*The exception of lack of capacity of the club C.S. F.C. Viorel Mateianu to act as a claimant shall be rejected”.*

#### **4. PROCEEDINGS BEFORE THE CAS AND THE PARTIES’ SUBMISSIONS**

- 4.1. On 18 October 2011, the Appellant filed an appeal to the Court of Arbitration for Sport (the “CAS”) against the Challenged Decision.
- 4.2. The Appellant seeks the following relief:
  - 4.2.1. The Challenged Decision issued on 29 September 2011 by the Romanian Football Federation Board for Appeal is annulled;
  - 4.2.2. S.C. Fotbal Club CFR 1907 S.A. does not owe any amount to the Sporting Club Association F.C. Viorel Mateianu;
  - 4.2.3. The Romanian Football Federation and Sporting Club Association F.C. Viorel Mateianu shall bear all costs of the proceedings;
  - 4.2.4. The Romanian Football Federation and Sporting Club Association F.C. Viorel Mateianu shall be ordered to compensate FC Cluj for its legal fees and other expenses incurred in connection with the proceedings and, in particular for the costs of witnesses and interpreters.

- 4.3. The Appellant also sought a stay of the Challenged Decision.
- 4.4. On 31 October 2011, the Second Respondent filed an answer to the request for provisional and conservatory measures.
- 4.5. On 4 November 2011 the Deputy President of the CAS Appeals Arbitration Division issued an order granting the Appellant's request for provisional and conservatory measures.
- 4.6. As a result of foresaid decision the Appellant made a deposit of EUR 50,000 as security on the CAS bank account.
- 4.7. On 29 November 2011, pursuant to Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that Mr Hendrik Willem Kesler, attorney-at-law in Enschede, The Netherlands was appointed to decide the present matter as Sole Arbitrator.
- 4.8. On 30 December 2011 the CAS Court Office received the case file sent by the Romanian Football Federation, the First Respondent.
- 4.9. On 16 January 2012 the Appellant filed its Appeal brief.
- 4.10. The First Respondent did not file an answer either to the request for provisional and conservatory measures or to the appeal brief, although the CAS office made several requests thereto on behalf of the Sole Arbitrator.
- 4.11. In accordance with Article R55 of the Code of Sports-related Arbitration (the "Code"), the Second Respondent filed its answer on 6 February 2012.
- 4.12. On 18 April 2012 the CAS Court Office informed the Parties that a Hearing would be held on 16 May 2012 in Lausanne. This letter was sent to the parties by fax and DHL and delivered to the First Respondent on 20 April 2012 and the Second Respondent on 23 April 2012.
- 4.13. On 16 May 2012 the Hearing took place in Lausanne. The Appellant was represented by Mr Jorge Ibarrola, attorney-at-law in Lausanne. The First and Second Respondents did not attend the Hearing.
- 4.14. During the Hearing the following witnesses were heard by means of videoconference: Mr Muresan Iuliu Paul, President of the Appellant; Mr Marian Salomir, former FIFA referee; Mr Farkhas Zoltan Laszlo, legal counsel of the Appellant; and Mr Cristian Vasc, sporting director of FC Baia Mare, at the time when the agreements between the Appellant and FC Baia Mare were concluded. All witnesses were present in the office of the Appellant in Romania and brought forward by the Appellant.
- 4.15. The Appellant and the Sole Arbitrator had the opportunity to examine the witnesses.

- 4.16. The Appellant then had ample opportunity to present his case, submit his arguments and answer the questions posed by the Sole Arbitrator.
- 4.17. Before the Hearing was concluded the Appellant expressly stated that he did not have any objection with the procedure and that his right to be heard had been respected.
- 4.18. The Sole Arbitrator confirms that he carefully took into account in its discussion and subsequent deliberations all of the submissions, evidence and arguments presented by the Parties, even if they have not been specifically summarized or referred to in the present Award.

## **5. SUBMISSIONS OF THE PARTIES**

- 5.1. The following outline of the Parties' positions is illustrative only and does not necessarily encompass every contention put forward by the Parties.
- 5.2. However, the Sole Arbitrator has carefully considered all the submissions made by the Parties, even if there is no specific reference to those submissions in the following summaries.

### **A. The Appellant's submissions**

The submissions of the Appellant, in essence, may be summarized as follows: In his statement of appeal, the Appellant requested the CAS to grant the relief set out above at paragraph 4.2 of this award.

- 5.3. The relief so sought was confirmed in the appeal brief dated 16 January 2012.
- 5.4. The Appellant paid the amount due for the transfer of the Player and underlines the conclusion of the NDRC in their decision from 26 July 2011 in which it is stated that the Debt Assignment Contract was invalid for failing to adhere to the conditions contained therein.
- 5.5. The Appellant submits that the inevitable conclusion in this matter is that FC Viorel has no direct right to claim any benefit under the transfer agreement, and that, given FC Cluj owed no debt to F.C. Baia Mare in relation to the transfer of the Player, this logically prohibits an assignment of such debt to FC Viorel.
- 5.6. Accordingly, FC Viorel has no right to claim any amount from FC Cluj in relation to the transfer of the Player.
- 5.7. The basis for this submission is the validity of the 23<sup>rd</sup> October agreement – which extinguished any debt owed by FC Cluj to FC Baia Mare, as well as the invalidity of the Debt Assignment Contract.

- 5.8. Part of the submissions is the conclusion that Mr Vasc, as sporting director of FC Baia Mare, was still authorised to conclude the agreement with the Appellant.
- 5.9. Furthermore, the Appellant underlines that it was in the position that they were in good faith that Mr Vasc was still representing FC Baia Mare, in accordance with the Romanian Civil Code in force in 2009, article 1554 and also in line with Swiss law (article 34 (3) and 101 (1) of the Swiss Code of Obligations (CO)).
- 5.10. The Appellant submits furthermore that neither the NDRC nor the Appeals Board held that the 23 October agreement was invalid.
- 5.11. Finally, the Appellant concludes that there was no direct right created in favour of FC Viorel in relation to the obligations under transfer agreement which leads to the outcome that the only amount FC Viorel could recover from FC Cluj is the amount of any debt owed by FC Cluj to FC Baia Mare in relation to the transfer of the Player.
- 5.12. As already submitted before, there was no debt from FC Cluj to FC Baria Mare in relation of the transfer of the Player anymore, as a consequence of the agreement of 23 October 2011.

**B. The First Respondent's submissions**

- 5.13. The First Respondent did not deliver any submissions.
- 5.14. The First Respondent – RFF – only delivered the complete file of the first and second instance and the RFF Dispute Tribunals but abstained from delivering any submissions in this case.

**C. The Second Respondent's submissions**

- 5.15. In their statement of defence the Second Respondent requested the Sole Arbitrator to order the following:
  - a. To dismiss the appeal of S.C. Fotbal Club CFR 1907 Cluj S.A. as unfounded.
  - b. To maintain the decision rendered on 29 September 2011 by the Appeal Committee of the RFF as legal and founded.
  - c. The immediate payment of the amount of EUR 50,000 to the Second Respondent from the CAS account.
  - d. The Appellant shall bear all the costs of the proceedings and the legal fees and other expenses incurred by the Second Respondent in connection with the proceedings.
- 5.16. The Second Respondent contests the validity of the agreement concluded on 23 October 2009 between the Appellant and FC Baia Mare for the following reasons:
  - a. the un-fulfillment of the conditions related to the 'cause' of contract;*
  - b. the wrong qualification of the agreement dated 23 October 2009;*

*c. the lack of consent of F.C. Baia Mare to conclude the agreement dated 23 October 2009*

- i. the lack of signature of the legal representative of F.C. Baia Mare;*
- ii. the lack of representative capacity of Mr. Vasc Cristian to sign the agreement dated 23 October 2009;*

*d. the non-compliance of the agreement dated 23 October 2009 with the forms prescribed by the Romanian Insolvency Law for the contracts concluded by a legal person during the judicial reorganization”.*

- 5.17. The Second Respondent furthermore refers to the contract concluded on 1 June 2010 between the Second Respondent and FC Baia Mare, which the Second Respondent considered as a perfect valid contract, by analysing all the allegations of the Appellant as irrelevant.
- 5.18. Finally, the Second Respondent concludes that they are entitled to claim payment directly from the Appellant.
- 5.19. The Second Respondent underlines that this claim is being upheld by keeping its capacity as creditor of FC Baia Mare and thus having the capacity to act as claimant even in the absence of the Debt Assignment Contract.
- 5.20. The Second Respondent states that a claimant may exercise directly any and all the actions that its debtor had to right to take that the latter waived out of negligence.

## **6. JURISDICTION OF THE CAS**

- 6.1. Article R47 of the Code of Sports-related Arbitration (the “Code”) provides that:

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

- 6.2. Article 57 (3) and 58 (3) of the Statutes of the Romanian Football Federation provide (translation provided by the Appellant):

*57 (3) – Decisions delivered by the Board of Appeal within RFF can be contested before the Court of Arbitration for Sport from Lausanne;*

and

*58 (3) – The Court of Arbitration for Sport from Lausanne has the capacity to resolve any litigation between FIFA, UEFA, regional confederations, national federations, leagues, clubs, players, officials, players’ agents or licensed match agents, if the Statutes of FIFA/UEFA/RFF do not foresee otherwise.*

- 6.3. Furthermore, the Decision provides that *“the Decision can be contested with the Court of Arbitration for Sport within 21 days since communication”.*

- 6.4. Based on the foregoing it follows that CAS has jurisdiction to decide on the present dispute.
- 6.5. Under Article R57 of the CAS Code, the Sole Arbitrator has full power to review the facts and the law and he may issue a new decision, which replaces the Decision challenged.

## **7. APPLICABLE LAW**

- 7.1. Article R58 of the CAS 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”.*

- 7.2. In their submissions the Parties refer to the Statutes of the Romanian Football Federation.
- 7.3. In addition, within the meaning of article 187 (1) PILA, the rules of law chosen by the parties do not need to be national laws, but can be non-governmental regulations (LALIVE/POUDRET/REYMOND, *Droit de l'arbitrage interne et international en Suisse*, Lausanne, 1989, pp. 399-400), such as in particular the rules and regulations of International Sport Federations. It is common for the CAS to primarily apply the various rules and regulations of such Federations (TAS 92/80, *Digest of CAS Awards I*, p. 287, 292).
- 7.4. Consequently the Sole Arbitrator is satisfied to apply primarily the RFF Regulations and complementarily Romanian law, should the need arise to fill a possible gap in the RFF Regulations.
- 7.5. In addition to the application of the RFF Regulations, the Sole Arbitrator finds that the FIFA regulations are applicable to the present case if necessary, as the parties are affiliated to the Romanian Football Federation and the RFF on their part is a member of FIFA.
- 7.6. Art. 62.2 of the FIFA Statutes provides: *“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”.*
- 7.7. The Sole Arbitrator concludes thus that in addition to para 7.4 of this Award, the FIFA regulations and Swiss law is – if needed – applicable.

## **8. ADMISSIBILITY**

- 8.1. Article R58 of the Code provides:

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

*the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.*

- 8.2. The Challenged Decision provides that any appeal shall be filed “*within 21 days since communication*”. The Challenged Decision was notified to the Appellant on 6 October 2011 and the appeal was filed on 18 October 2011. It follows that the appeal was filed in due time and is therefore admissible.

## **9. LEGAL MERITS**

- 9.1. The origin of the present dispute between the Parties can be found in the original Transfer Agreement between the Second Respondent (FC Viorel) and the Club FC Baia Mare, which was concluded on 5 March 2007 and duly registered with the Romanian Football Federation.
- 9.2. This foresaid Agreement states the following in Article 2:  
*“F.C. Baia Mare undertakes the commitment to give a 50% percent of the amount obtained after possible transfer of the Player to another team to the club F.C. Viorel Mateianu”.*
- 9.3. The Sole Arbitrator finds that the contents of this foresaid Agreement are not disputed by the Parties.
- 9.4. On 9 July 2009, FC Baia Mare and the Appellant (FC Cluj) entered into a Transfer Agreement regarding the Player P., which provided that the Appellant would pay FC Baia Mare a transfer fee of EUR 40,000 plus VAT and an additional amount of EUR 100,000 should the Player take part in more than ten matches with the Appellant’s first team. The transfer fee of EUR 40,000 plus VAT was paid by the Appellant to FC Baia Mare. This Agreement was also duly registered with the Romanian Football Federation (RFF).
- 9.5. The Sole Arbitrator underlines once more that the contents of this Agreement are not disputed by the Parties.
- 9.6. The claims and disputes by the Parties are however caused by two separate agreements after the conclusion of the first two non-disputed agreements from 5 March 2007 and 9 July 2009.
- 9.7. On 23 October 2009 an agreement was concluded between the Appellant and again FC Baia Mare whereby FC Baia Mare renounced to any further claims regarding the transfer of the Player in exchange for the release of another player (V.).
- 9.8. The validity of this agreement is contested by the Second Respondent (FC Viorel) submitting thereto-legal arguments as set out under para 5.16 here above.
- 9.9. On 1 June 2010 FC Baia Mare and the Second Respondent (FC Viorel) entered also into an agreement whereby FC Baia Mare assigned its debts to the Second Respondent (FC Viorel) in the following terms:

*“The object of the present contract is the debt of EUR 70,000 plus VAT, representing the percentage of 50% of the transfer of the player P.”*

The Appellant submits that this debt assignment is invalid because FC Baia Mare cannot transfer to another a larger right than it has, the *“nemo plus rule”* briefly summarized. Even if this agreement should be considered as valid – quod non – the Second Respondent (FC Viorel) thus received nothing or a non-existing amount, according to the submissions of the Appellant (FC Cluj).

- 9.10. The facts and conclusions here above leave three legal issues to be solved by the Sole Arbitrator:
- a. Is the additional agreement from 23 October 2009 between the Appellant (FC Cluj) and FC Baia Mare to be considered valid?
  - b. Is the debt assignment concluded between the Second Respondent (F.C. Viorel) and FC Baia Mare from 1 June 2010 valid?
  - c. Has the Second Respondent (FC Viorel) a right to claim –even if there was no valid debt-agreement-direct on the Appellant (FC Cluj)?
- 9.11. First of all the Sole Arbitrator wants again to emphasize that the contracts concluded on 5 March 2007 and 9 July 2009 between the parties as mentioned here above (see para 9.1-9.4) are valid and not disputed by the parties, so that any rights that may derive from them can be executed, if they still exist.
- 9.12. Secondly, the Sole Arbitrator is of the opinion that if the answer on the first question about the validity of the 23 October 2009 agreement is positive, the answer on the second question about the validity of the 1 June 2010 debt agreement between the Second Respondent (FC Viorel) and FC Baia Mare is of no legal relevancy anymore and only the third question, as formulated under para 9.9 sub c, has to be answered then.
- 9.13. If the agreement of 23 October 2009 is however considered as invalid, then of course the legal validity of the debt assignment agreement of 1 June 2010 has to be considered and proven, as the Appellant (FC Cluj) contests this.
- a) The validity of the agreement of 23 October 2009 concluded between the Appellant (FC Cluj) and FC Baia Mare.**
- 9.14. The Sole Arbitrator will now analyse the validity or non-validity of this contract.
- 9.15. He thereby takes of course into account all the written and oral submissions brought forward by the Appellant and the Second Respondent, as well as the statements of the witnesses that were heard during the course of the Hearing, held in Lausanne on 16 May 2012.
- 9.16. Firstly, the Sole Arbitrator notes that the agreement was duly registered with the Romanian professional Football League under Number 2994 on 27 October 2009.

9.17. Secondly, the Sole Arbitrator notes that both judicial bodies of the Romanian Football Federation (RFF National Dispute Resolution Chamber (NDRC) and the Romanian Football Federation Board for Appeal held the agreement for valid in their given decisions.

Both bodies considered, amongst other, following facts and circumstances:

- It was not proven that Mr Christian Vasc, who signed the document had no legal statutory or contractual capacity was not proven;
- The documents submitted by the Second Respondent, i.e. the resignation letter of 12 November 2009 shows that Mr Vasc Christian resigned from the position of sporting manager at FC Baia Mare as of 1 November 2009 and could only have effect as from 12 November 2009, where the agreement was executed on 23 October 2009;
- The fact that on 23 October 2009 Mr Vasc Christian should have been on medical leave was irrelevant as this does not affect his capacity as a representative of the club from the position of sporting manager;
- In his statement for the foresaid bodies he does not specify explicitly that the signature next to his name does not belong to him;
- There were no claims filed by the Second Respondent regarding the nullity of the agreement of 23 October 2009, nor did the liquidator of FC Baia Mare S.A. made any efforts with the relevant authorities to start an investigation of possible crime involving the falsification of the agreement.

9.18. The Sole Arbitrator has as first legal step to consider the burden of proof on the validity of this agreement. Taken into account the considerations above, the Sole arbitrator finds that the burden of proof is on the side of the Second Respondent who actually claims that a registered and duly signed document is false.

9.19. Only the written evidence of the Second Respondent brought forward in his submissions cannot convince the Sole Arbitrator on this item, in line with the decisions of the foresaid bodies.

9.20. So, the Sole Arbitrator makes then the following step by judging the statements of the witnesses that were heard during the Hearing on the 16 May 2012 for the CAS in Lausanne.

9.21. Three witnesses declared that on 23 October 2009 an agreement was signed by Mr Vasc, at that time director of FC Baia Mare on the one side and the president of FC Cluj on the other side.

9.22. Although those statements of course do not clearly specify that this was the foresaid agreement it is to be considered as an indication that on that particular date an agreement between FC Baia Mare and FC Cluj was concluded and Mr Vasc attended the signing and took part in it. The registration of this contract on 29 October 2009 at the RFF is of course a strong indication for this.

- 9.23. The Sole Arbitrator finds the statement of Mr Vasc himself that he could not remember that he was there, not very convincing, considering that Mr Vasc declared that shortly afterwards he became a manager with FC Viorel.
- 9.24. Having analysed the statement of the witnesses here above the Sole Arbitrator comes to speak about the submissions of the Second Respondent (FC Viorel) as set out under para 5.16 of this Award, in particular seen in the light of the burden of proof laid on the Second Respondent (FC Viorel).
- 9.25. The Sole Arbitrator starts with the first submission (para 5.16 sub a) of the Second Respondent (FC Viorel) that it had a legitimate interest to invoke the lack of legal effects of the agreement created on 23 October 2009. The reasons of inefficiency of the convention is given by its conclusion to the detriment of the Second Respondent, having his rights arising from the transfer of the player denied.
- 9.26. This first submission from the Second Respondent (FC Viorel) that there was no existing cause cannot be upheld. In the agreement is an option for FC Baia Mare agreed upon with regards to the player V., regardless where he played at that moment.
- 9.27. The holder of the federal and economical rights of this player was at that time FC Cluj, so there was a financial cause to this agreement between the parties involved. It is of course not the task of the Sole Arbitrator to judge about the skills of the player V. Any relevant evidence about other facts and circumstances was not brought forward by the Second Respondent (FC Viorel)
- 9.28. The Sole Arbitrator considers it irrelevant that FC Baia Mare never required the release of the foresaid player, as any option can be exercised or not to the free choice of the holder of it.
- 9.29. The first submission (5.16 sub a) is therefore dismissed.
- 9.30. The Sole Arbitrator considers the second submission (5.16 sub b) of the Second Respondent (FC Viorel) as an extension of the first submission and contains no new legal substance and has therefore to be dismissed on the same grounds as set out above.
- 9.31. The submission under 5.16 sub c has now to be dealt with by the Sole Arbitrator. The Second Respondent brings two grounds forward to underline this submission:
- a. The lack of signature of the legal representative of FC Baia Mare and
  - b. The lack of representative capacity of Mr Vasc Cristian to sign the agreement of 29 October 2012.
- 9.32. The Sole Arbitrator stipulates on this subject once again his conclusions about the burden of proof mentioned above under para 9.23 of this Award.

- 9.33. First of all it was not proven nor by documents nor by the statements of the witnesses that Mr Vasc was not allowed to sign the foresaid agreement.
- 9.34. Secondly the Sole Arbitrator finds that the Appellant (FC Cluj) was acting in good faith as FC Baia Mare was concluding several agreements without the signatures of the legal representative-judicial liquidator-from FC Baia Mare.
- 9.35. Moreover both the legal bodies of the RFF could not find proper arguments to annul the agreement and the Second Respondent (FC Viorel) did not succeed to prove the opposite.
- 9.36. Finally -still under the terms of the third submission- the Sole Arbitrator refers to the Statement of Defense of the Second Respondent (FC Viorel) on page 10 under E, nr.41. Although there was a hearing announced on 16 May 2012, the Second Respondent failed to submit the promised documents before that day.
- 9.37. The Sole Arbitrator comes then to speak about the last submission from the Second Respondent referring to the 23 October 2012 agreement, as set out under 5.16, sub d here above.
- 9.38. The Sole Arbitrator considers this as a repetition or may be an extension of the third submission, but he cannot find any new arguments that have not yet discussed and decided.
- 9.39. As none of the submissions made by the Second Respondent on this legal issue can be upheld the Sole Arbitrator concludes that the agreement of 23 October 2009 is perfectly valid.
- 9.40. This leads to the conclusion that there is no debt anymore from FC Baia Mare to the Appellant (FC Cluj) and therefore the debt-agreement of 1 June 2010 is to be considered as null and void because it lacks any legal substance and needs no further legal analysis regarding the formalities of it, as brought forward by the parties.
- 9.41. The last legal issue to solve- see para 9.9 under c -is the question whether the Second Respondent (FC Viorel) has a right to claim directly- and not via the debt-assignment-any amount from the Appellant (FC Cluj), as so decided by the RFF Board for appeal in its decision from 29 September 2011.
- 9.42. The Appellant (FC Cluj) contests this decision by submitting that there never has been any contractual relationship between the Appellant (FC Cluj) and the Second Respondent (FC Viorel).
- 9.43. The Sole Arbitrator first of all stipulates that in the case at stake –as earlier concluded- four agreements were signed between several parties. FC Cluj (The Appellant), FC Baia Mare (not a party to this arbitration) and FC Viorel (Second Respondent).

- 9.44. Not one of the four agreements was duly concluded between The Appellant (FC Cluj) and the Second Respondent (FC Viorel). Therefore it was and stays undisputed there is no direct contractual relationship between those foresaid parties.
- 9.45. The legal issue is thus whether any direct claim from the Second Respondent (FC Viorel) on the Appellant (FC Cluj) can be adopted otherwise.
- 9.46. The RFF Board for Appeal concludes in its decision of 29 September 2011 that:
- “The irrevocable surrendering of financial rights (100.000 Euro) stipulated by article 4 of the above mentioned transfer agreement cannot produce legal effects except as to the 50% share due by S.C. F.C.Baia Mare S.A because, on the previous agreement from 2007(still existing), this club could not rule on the rights of C.S.F.C Viorel Mateianu, without the consent of the latter.*
- Also, C.S.F.C Viorel Mateianu, maintained its capacity of creditor of S.C.F.C Baia Mare S.A and has active legal standing, in this cause, even in the absence of a debt assignment contract.*
- In order to avoid the prejudice of its patrimony, the claimant club may directly perform all procedures (for its share) that its debtor, SC FC Baia Mare SA had and which were, by negligence or malice, surrendered; procedures against third party debtors, especially F.C. CFR 1907 Cluj so, the claimant has active legal standing.*
- Even under this aspect, total surrendering of rights, including those of the claimant club, without its consent is not valid as shown”.*
- 9.47. The Sole Arbitrator finds no legal support for this reasoning. The reasoning lacks any reference to applicable articles under Romanian law (Civil Code and /or law on bankruptcy) nor any kind of applicable jurisprudence in this case.
- 9.48. The Sole Arbitrator goes back to the agreement of 23 October 2009, which is now considered as valid one. The question at stake is now whether FC Baia Mare was entitled to enter this agreement taking into account the still existing transfer agreement of 2007 with the Second Respondent (FC Viorel). The Sole Arbitrator sees no legal obstructions for entering as such and takes also for granted that the Appellant (FC Cluj) acted in good faith with respect to standing legal position of FC Baia Mare (*Vide* para 9.34 above).
- 9.49. It is the position of FC Baia Mare that has to be analysed further. It is without further discussion that FC Baia Mare might infringe or even infringed the contractual rights of the Second Respondent (FC Viorel) out of the 2007 transfer agreement.
- 9.50. The Sole Arbitrator can however not conclude that this way of acting of FC Baia Mare could harm the rights of the Appellant (FC Cluj) out of the 23 October 2009 agreement. An agreement concluded in good faith, with undisputed deliverables on both sides. Facing a claim from a non-contractual third party would only be acceptable if any sound legal basis could be found for this, such as for example a debt-assignment. As already decided above, the existence of an agreement like this could not be proven.

- 9.51. The Sole Arbitrator wants finally to conclude that of course the Second Respondent (FC Viorel) was not deprived of its rights out of the still existing 2007 transfer agreement. It is of course FC Baia Mare that still has to be liable for the amounts agreed upon in this 2007 agreement. Contracting is one thing but respecting thereby the rights of parties involved in former contracts should of course be the case and remains the responsibility of FC Baia Mare.

## CONCLUSION

- 9.52. Based on the foregoing and taking into due consideration all the evidence produced and all arguments made, the Sole Arbitrator finds on the questions under para 9.9 above that:
- a. the additional agreement from 23 October 2009 is to be considered as valid and therefore legally effective;
  - b. the debt assignment concluded on 1 June 2010 is therefore irrelevant because it has no legal cause;
  - c. there is no legal basis for a direct claim from the Second Respondent (FC Viorel) on the Appellant (FC Cluj).
- 9.53. Therefore the Second Respondent F.C. Viorel has no claim against the Appellant because lack of legal standing and the appeal must be upheld and the CAS-office has to pay back the security amount of EUR 50,000 to the Appellant (FC Cluj).

## ON THESE GROUNDS

### The Court of Arbitration for Sport rules:

1. The appeal filed on 18 October 2011 by FC Cluj against the decision issued on 29 September 2011 by the Board for Appeal of the Romanian Football Federation is upheld.
2. The Decision issued on 29 September 2011 by the Board for Appeal of the Romanian Football Federation is set aside.
- (...)
5. All other motions or prayers for relief are dismissed.