Arbitration CAS 2013/A/3278 Maritimo de Madeira – Futebol SAD v. Desportivo Brasil Participacoes LTDA, award of 2 June 2014

Panel: Mr Dirk-Reiner Martens (Germany), President; Mr Quentin Byrne-Sutton (Switzerland); Prof. Denis Oswald (Switzerland)

Football
Dispute regarding contractual matters
Standing to sue and be sued in general
Standing to be sued of FIFA
Validity of a choice-of-forum clause

1. **Under Swiss law, the closest concept to standing to sue/be sued is so-called "légitimation active/passive" ("Aktiv- und Passivlegitimation"), which is characterized as a matter of substantive law (as opposed to procedural). Legitimation active/passive derives from the mere fact of legally owning the right in dispute, i.e. a party has standing to sue or to be sued if a substantive right of its own is concerned by the claim.**

2. **In case an appellant is invoking a contractual right not to be subject to the obligation to pay contractual compensation to the respondent based on a contractual right not to be sued in front of FIFA, a decision concerning the competence of FIFA under its Transfer Regulations can be taken without FIFA being named as co-respondent because the appellant's claims involve its contractual rights and it has standing to sue with respect to those prayers for relief.**

3. **A Swiss sports association may not validly in its Statutes or regulations entirely exclude access to an independent jurisdiction (State court or independent arbitral tribunal). Under the freedom of contract and Swiss provisions on choice-of-forum clauses, parties to an international contract are entitled to include a choice-of-forum clause in their contract; a choice-of-forum clause is deemed exclusive, unless expressly provided otherwise. Consequently, in a case dealing with an international contract between indirect members of FIFA and a purely contractual dispute which does not involve FIFA as a party or any sanctions taken by FIFA, the parties are entitled to validly adopt between themselves a choice-of-forum clause in favour of State courts.**

I. FACTUAL BACKGROUND

A. The Parties

1. Maritimo da Madeira – Futebol SAD (hereinafter also referred to as the "Appellant") is a Portuguese football club from Funchal, Madeira. It is a member of the Portuguese Professional Football League, an organ of the Portuguese Football Federation, which in turn is a member of the Fédération Internationale de Football Association ("FIFA").

2. Desportivo Brasil Participacoes LTDA ("Respondent") is a Brazilian football club from Porto Feliz, São Paulo. It is a member of the Federação Paulista de Futebol, an affiliate of the Brazilian Football Confederation ("CBF"), which in turn is a member of FIFA.

B. The Dispute between the Parties

3. The Appellant challenges before CAS a decision by the Single Judge of the FIFA Player Status Committee ("FIFA Decision"), which ordered the Appellant to pay to the Respondent an amount of EUR 190,035 plus interest as well as CHF 18,000 in legal costs.

4. The circumstances stated below are a summary of the main relevant facts as submitted by the parties. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.

5. On 2 December 2009, the Respondent and the Brazilian player R. (the "Player") entered into a "first option agreement" which included the right for the Respondent to enter into an employment contract with the Player for the period between 15 January 2010 and 30 June 2013. The Respondent was given until 14 January 2010 to exercise said option.

6. On 31 December 2009, the Player's employment contract with the Brazilian club Atlético Mineiro and a concurrent loan agreement with the Brazilian club Atlético Paranaense expired.

7. On 8 January 2010, the Respondent, the Player and the Appellant signed an agreement by which the Respondent renounced its option to sign an employment contract with the Player and the Player's *"federative rights"* were assigned to the Appellant ("First Agreement"). In return, the Appellant undertook to pay to the Respondent EUR 250,000 in four instalments of EUR 62,500, starting in February 2010. In case of a dispute, the parties agreed to submit their case to the ordinary courts of Funchal, Portugal. Furthermore, the agreement included a "choice-of-law clause" in favour of the FIFA Regulations on the Status and Transfer of Players ("FIFA Transfer Regulations").

8. On the same day, the Respondent, the Player and the Appellant agreed to cancel the First Agreement by signing a termination agreement.

9. Subsequently on 8 January 2010, the Respondent, the Player and the Appellant signed a new agreement ("Second Agreement") by which the Respondent once again renounced its option to sign an employment contract with the Player. Yet, the Player's *"federative rights"* were not

assigned to the Appellant. Instead, the parties agreed that the Player only *"undertakes to sign an employment contract"* with the Appellant. Once a contract between the Player and the Appellant would have been signed, the Appellant would be *"the sole holder of the Player's federative rights"*. In return, the Appellant was obliged to pay to the Respondent a compensation of EUR 250,000 in two instalments of EUR 125,000, the first instalment to be paid in May 2010 and the second in September 2010. Section 5 of the Second Agreement stated:

> *"For all legal consequences, the Parties elect their addresses referred on the preamble of this agreement and shall only be valid the notifications from the jurisdiction of the common courts of Funchal's Judicial District"* [Translation provided by the Appellant].

10. On 30 June 2011, the Appellant paid to the Respondent an amount of EUR 30,000.

11. On 18 July 2011, the Appellant paid to the Respondent an amount of EUR 29,965.

12. Thereafter, the Appellant did not make any further payments to the Respondent.

C. The Proceedings before the FIFA Player Status Committee

13. On 7 December 2011, the Respondent lodged a claim against the Appellant before the FIFA Player Status Committee ("FIFA PSC"), requesting that the Appellant be ordered to pay EUR 190,035 (i.e. EUR 250,000 minus EUR 59,965 already paid) plus interest as of November 2010 and legal expenses in the amount of EUR 19,035.

14. In the FIFA PSC proceedings, the Appellant contested that FIFA was competent to decide the case brought by the Respondent, invoking the alleged choice-of-forum clause in the Second Agreement, which assigned any disputes between the parties to the ordinary courts of Funchal, Portugal. Furthermore, the Appellant argued that the parties' agreement did not constitute a player transfer in the sense of the FIFA Transfer Regulations but merely a commercial transaction between the parties, i.e. a mere waiver of the Respondent's option to sign an employment contract with the Player. Thus, FIFA would not be competent to deal with the parties' case as it was not a transfer dispute as described in Article 22 of the FIFA Transfer Regulations.

15. On 23 April 2013, the Single Judge of the FIFA PSC decided:

> *1. "The claim of the Claimant, Desportivo Brasil, is admissible.*
>
> *2. The claim of the Claimant, Desportivo Brasil, is partially accepted.*
>
> *3. The Respondent, Maritimo da Madeira, has to pay to the Claimant, Desportivo Brasil, the amount of EUR 190,035, plus interest at a rate of 5 % p.a. from 1 December 2010 until the date of effective payment, within 30 days as from the date of notification of this decision.*
>
> *4. Any further claims lodged by the Claimant, Desportivo Brasil, are rejected.*

5. If the aforementioned amount of EUR 190,035, plus interest as established above, is not paid within the aforementioned deadline, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.

6. The final costs of the proceedings in the amount of CHF 18,000 are to be paid by the Respondent, Maritimo da Madeira, within 30 days as from the date of notification of the present decision […]

6.1. The amount of CHF 14,000 has to be paid to FIFA […]

6.2. The amount of CHF 4,000 has to be paid directly to the Claimant, Desportivo Brasil.

7. […]".

16. Considering the issue of competence, the Single Judge held that the dispute was concerned with a player transfer and that it was competent to deal with the case based on Article 22 lit. f), 23 § 1, 3 of the FIFA Transfer Regulations, 2010 edition. Regarding the alleged choice-of-forum clause invoked by the Appellant, the Single Judge referred to Article 68 § 2 of the FIFA Statutes, 2012 edition, according to which recourse to ordinary courts of law is prohibited unless specifically provided for in the FIFA regulations.

17. The FIFA Decision was notified to the parties on 11 July 2013.

II. PROCEEDINGS BEFORE THE CAS

18. On 1 August 2013, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport ("CAS") against the FIFA Decision pursuant to Article R48 of the Code of Sports-related Arbitration ("CAS Code"). The appeal is directed against the Respondent, not against FIFA.

19. On 12 August 2013, the Appellant submitted its Appeal Brief pursuant to Article R51 of the CAS Code.

20. On 20 August 2013, FIFA renounced its right to intervene in the present proceedings. At the same time, FIFA argued that CAS would not be able to set aside the FIFA Decision for lack of competence of the FIFA PSC, because FIFA was not named a co-respondent in the present proceedings. Otherwise, FIFA's right to be heard would be violated and the award by CAS would not be binding on FIFA.

21. On 6 September 2013, the Respondent filed its Answer pursuant to Article R55 of the CAS Code.

22. On 10 September 2013, the CAS Court Office invited the parties to express their preference for a hearing to be held in the present matter.

23. On 10 September 2013, the Appellant expressed its preference for a decision to be rendered solely on the parties' written submissions. The Respondent did not express an opinion.

24. On 9 December 2013, the parties were informed of the constitution of the Panel as follows:

President: Mr Dirk-Reiner Martens, Attorney-at-Law, Munich, Germany;

Arbitrators: Mr Quentin Byrne-Sutton, Attorney-at-law, Geneva, Switzerland;

Mr Denis Oswald, Professor, Colombier, Switzerland.

25. On 27 January 2014, the parties were informed that the Panel had decided to render a decision based solely on the parties' written submissions, pursuant to Article R57 of the CAS Code.

26. On 29 January 2014, the Appellant signed the Order of Procedure.

27. On 7 March 2014, the Respondent signed the Order of Procedure.

III. PARTIES' POSITIONS AND PRAYERS FOR RELIEF

28. The following section summarizes the parties' main arguments in support of their respective prayers for relief.

A. The Appellant

29. The Appellant raises two main arguments in order to establish why the FIFA PSC was not competent to deal with the dispute between the parties: For one, because the parties agreed to a choice-of-forum clause in favour of state courts and, second, because the parties had not concluded a transfer agreement, hence, the FIFA Transfer Regulations would not be applicable.

30. The Appellant argues that the FIFA PSC was not competent to decide over the case according to Clause No. 5 of the Second Agreement and Article 17 of the Swiss Civil Procedure Code which reads:

> *"Unless the law provides otherwise, the parties may agree on which court has jurisdiction over an existing or future dispute arising from a particular legal relationship. Unless the agreement provides otherwise, the action may only be brought before* [the] *agreed court".*

31. The Appellant claims to have a constitutional right to submit its case to an ordinary court of law and that constitutional law would override any association law to the contrary. Appellant points to Article 29 lit. a) of the Swiss Constitution, which provides:

> *"In a legal dispute, every person has the right to have their case determined by a judicial authority".*

The Appellant is of the opinion that Article 68 para. 2 of the FIFA Statutes which states that *"recourse to ordinary courts of law is prohibited unless specifically provided for in the FIFA regulations*", violates Article 29 lit. a) of the Swiss Constitution.

32. The Appellant further refers to Article 63 para. 2 of the Swiss Civil Code which provides:

> *"Mandatory provisions of law cannot be altered by the articles of association".*

In this respect, the Appellant contends that Article 3 para. 1 of the Procedural Rules as well as Article 22 lit. f), 23 para. 1 and 3 of the FIFA Transfer Regulations and Article 68 para. 2 of the FIFA Statutes infringe Article 63 para. 2 of the Swiss Civil Code.

33. Finally, the Appellant argues that Article 68 para. 2 of the FIFA Statutes also infringes Article 8 of the Swiss Constitution which states:

> *"Every person is equal before the law".*

The Appellant considers that Article 68 para. 2 of the FIFA Statutes discriminates against legal persons since they would be prevented from submitting cases to ordinary courts of law (unless they are employment related), while natural persons are allowed to resort to state courts.

34. The Appellant contends that the case at hand does not qualify as a transfer dispute under the FIFA Transfer Regulations. The parties' agreement was merely concerned with the waiver of the Respondent's option in exchange of payment and thus of a purely private or commercial nature. The FIFA Transfer Regulations, on the other hand, refer exclusively to transfers and loans, neither of which was at stake in the present dispute.

35. In light of the above, the Appellant requests CAS to

> 1. *Entirely accept the present appeal and consequently set aside the appealed decision;*
>
> 2. *Establish that FIFA's Jurisdictional Bodies, particularly the Single Judge of the Player Status Committee, had an absolute lack of competence and jurisdiction to decide upon the present dispute;*
>
> 3. *Establish that the jurisdiction over the present dispute exclusively belongs to the Common Courts of Funchal, Madeira, Portugal;*
>
> 4. *Condemn the Respondent to bear all the proceeding costs incurred in the present procedure, as well as to contribute to support the expenses incurred by the Appellant (e.g. travel, accommodation and legal assistance) in a minimum amount of CHF 15.000,00 (fifteen thousand Swiss Francs).*

B. The Respondent

36. The Respondent requests CAS to render an award

> 1. *Entirely rejecting the appeal lodged by the Claimant* [Appellant]*;*
>
> 2. *Confirming the validity and enforceability of the decision passed by the Single judge of FIFA's Players' Status Committee on 23 April 2013;*
>
> 3. *Determining the claimant* [Appellant] *to comply with the decision and pay the Respondent the*

amount established by FIFA; and

4. *Condemn the Claimant* [Appellant] *to bear all the costs associated with the present procedure as well as to support the expenses incurred by the Respondent in connection herewith, in the minimum amount of 10,000.00€ (ten thousand Euros).*

37. The Respondent notes that the Appellant does not contest having breached its contractual obligations under the Second Agreement. Thus, Respondent concludes that the Appellant with its appeal simply tries to avoid its payment obligations.

38. Respondent argues that because FIFA was not named as co-respondent in the present proceedings, the appeal is *"null from a formal perspective"*.

39. Respondent maintains that FIFA was competent to deal with the case because the parties treated the transaction between them as a *"common transfer"*. In this regard, the Respondent explains that the parties were forced to cancel the First Agreement upon realizing that the execution of the contract would have meant that the Player was registered with four different clubs within the 2009/2010 sporting season, namely, with Atlético Mineiro, Atlético Paranaense, the Respondent and the Appellant. Since the player would have been unable to play matches for the Appellant under Article 5 (3) of the FIFA Transfer Regulations, which only allows a player to be registered for a maximum of three clubs during the period from 1 July until 30 June, the parties decided to revoke the First Agreement. The Second Agreement thus contemplated a direct registration of the Player with the Appellant without prior registration of the Player with the Respondent, as a result of which the Player would be eligible to play once registered with the Appellant. Nonetheless, the transaction between the parties should still be considered a player transfer.

IV. JURISDICTION

40. The jurisdiction of CAS derives from Article R47 of the CAS Code and Articles 66 (1) of the FIFA Statutes in connection with Article 23 (3) of the FIFA Transfer Regulations.

41. Article R47 of the CAS Code stipulates:

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

42. Articles 66 (1) states that:

> *"FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, Clubs, Players, Officials and licensed match agents and players' agents".*

43. Article 23 (3) of the FIFA Transfer Regulations provides:

> *"[…] Decisions reached by the single judge or the Players' Status Committee may be appealed before the Court of Arbitration for Sport (CAS)".*

44. In light of the above, the Panel notes that the present appeal against the FIFA decision is directed against a final decision of a federation, the statutes and regulations of which provide for an arbitration clause in favour of CAS. Hence, the appeal falls within the scope of Article R47 CAS Code.

45. Furthermore, the Panel finds that by submitting the present appeal to CAS without challenging the jurisdiction of CAS in their submissions and by signing the Order of Procedure, the parties concluded, at least, an *ad-hoc* arbitration agreement to obtain an arbitral award regarding the questions raised in the appeal. This *"specific arbitration agreement"* is explicitly covered by Article R47 of the CAS Code. It follows that the CAS has jurisdiction to decide the present dispute.

V. ADMISSIBILITY

46. In accordance with Article 67 (1) of the FIFA Statutes

> *"[a]ppeals against final decisions passed by FIFA's legal bodies […] shall be lodged with CAS within 21 days of notification of the decision in question".*

47. The FIFA Decision was notified to Appellant on 11 July 2013 and the Statement of Appeal was filed on 1 August 2013, thus within the 21-day time limit. It follows that the appeal is admissible.

VI. SCOPE OF THE PANEL'S REVIEW

48. According to Article R57 of the CAS Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged, or may annul the decision and refer the case back to the previous instance.

VII. APPLICABLE LAW

49. The applicable law is identified by the Panel in accordance with Article R58 of the CAS Code and Article 66 (2) of the FIFA Statutes.

50. Pursuant to Article R58 of the CAS Code, the Panel is required to 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".*

51. Article 66 (2) of the FIFA Statutes provides:

> *"The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".*

52. The Panel notes that the Second Agreement, unlike the First Agreement, does not contain a "choice-of-law clause". Appellant claims that Swiss law is applicable to the case, whereas the Respondent does not argue for a particular set of laws to be applied. However, the Respondent repeatedly expresses its view that the parties concluded an agreement subject to the FIFA Transfer Regulations. As a result, the Panel rules that the statutes and regulations of FIFA apply primarily and, additionally, Swiss law.

VIII. MERITS

53. The Panel finds that to adjudicate the Appellant's prayers for relief as formulated and bearing in mind the Parties' respective arguments, the following main questions need to be addressed.

- Does the Appellant have standing to sue the Respondent in relation to the claims?
- Is the choice-of-forum clause in the Second Agreement valid and, if so, what is its scope?

A. Standing to Sue and to be Sued

54. The FIFA Regulations contain no specific rules on the question of standing to sue/be sued or any definition thereof.

55. Under Swiss law, the closest concept to standing to sue/be sued is so-called "légitimation active/passive" ("Aktiv- und Passivlegitimation"), which is characterized as a matter of substantive law (as opposed to procedural).

56. Under Swiss law, legitimation active/passive derives from the mere fact of legally owning the right in dispute, i.e. a party has standing to sue or to be sued if a substantive right of its own is concerned by the claim.

57. With its prayers for relief n° 1, 2 and 3, the majority of the Panel takes the view that Appellant is in essence invoking a contractual right not to be subject to the obligation to pay contractual compensation to the Respondent based on a contractual right not to be sued in front of the Single Judge of the FIFA PSC. In other words, the Appellant's prayers are aimed at obtaining the enforcement of contractual rights it alleges to own under the Second Agreement.

58. Thus, the majority of the Panel finds that in the circumstances of this case a decision concerning the competence of FIFA under its Transfer Regulations can be taken without FIFA being named as co-respondent because the Appellant's claims involve its contractual rights and it has standing to sue with respect to those prayers for relief.

59. Furthermore, the Parties being bound by a bilateral contract under which the Parties' rights and obligations have not been assigned or taken over in any manner by a third party, the Respondent owns the corresponding contractual obligations and hence is the only person against whom the Appellant can seek to enforce them. FIFA, on the other hand, does not own any of the contractual rights or obligations in dispute and therefore has no standing.

60. In other words, respective rights and obligations of the Appellant and the Respondent as to the validity, scope and effects of the choice-of-forum clause and their financial rights and obligations under the contract are at stake – meaning that they respectively have standing to sue and to be sued.

61. The foregoing conclusion is reinforced by the fact that no fine or other form of sanction was inflicted on the Appellant by the Single Judge of the FIFA PSC or any other FIFA internal body, and the fact that FIFA itself elected to renounce taking part in the proceedings although under the FIFA Regulations it could have requested to participate as an intervening party.

62. In sum therefore, the majority of the Panel finds that the Appellant has standing to sue the Respondent alone.

63. In relation to the above findings and conclusion, the Panel refers also to the CAS jurisprudence, e.g. to case CAS 2007/A/1287, in which the Panel found *"that when merely acting as the competent deciding body of first instance in a dispute between two or more parties regarding transfer or contractual matters, FIFA cannot, in principle, be named as a respondent in the appeal procedure. Indeed, FIFA cannot be considered as the "passive subject" of the claim brought before the CAS by way of appeal against its decision, as its rights are not concerned by the relief sought by the appellant(s). It is hence clear that FIFA does not have any standing to be sued ("légitimation passive") …"* (DE LA ROCHEFOUCAULD E., *Standing to be sued, a procedural issue before the Court of Arbitration for Sport,* CAS Bulletin 1/2010, p. 56*).*

B. Validity and Scope of the Choice-of-Forum Clause

64. Within the autonomy which a Swiss sports association enjoys by law, there is the right to constitute internal bodies of its own to make decisions on disputes between itself and its members, providing however that a member's right to ultimately appeal to an entirely independent jurisdiction in the form of a State court or an independent arbitral tribunal is preserved. In other words, a sports association such as FIFA does not exercise "formal jurisdiction" comparable to that of a state court or an independent arbitral tribunal (cf. NETZLE S., Wer ist meine Gegenpartei? SchiedsVZ 2009, p. 93 *et seq.* (97); CAS 2008/A/1639, para. 34; Berner Kommentar zum schweizerischen Privatrecht, Articles 60-79 Swiss Civil Code, Bern 1990, p. 432, para. 46).

65. For the above reasons, a Swiss sports association may not validly in its Statutes or regulations entirely exclude access to an independent jurisdiction. Indeed, under Swiss law, the majority opinion is that any regulatory or statutory provisions of a sports association that attempt to do so are illegal, null and void. For example, in his treatise *"L'Arbitrage International en Matière de Sport"*, Antonio RIGOZZI states: *"Le principe de l'intervention de la justice étatique est consacré en premier lieu par la jurisprudence qui constate la nullité (du point de vue de l'ordre juridique) des clauses excluant le*

recours aux tribunaux étatiques".

66. At the same time, under the freedom of contract and Swiss provisions on choice-of-forum clauses (e.g. article 5 of the PIL Act and article 17 of the CPC) parties to an international contract are entitled to include a choice-of-forum clause in their contract; and under Swiss law, a choice-of-forum clause is deemed exclusive, unless expressly provided otherwise.

67. Consequently, in light of the above legal framework, the question here is whether in the circumstances of this case, the Appellant and the Respondent could validly include a choice-of-forum clause in their Second Agreement and, if so, whether it also had the effect of excluding the competence of the FIFA internal bodies (in this case the Single Judge of the FIFA PSC) as the primary instance to pronounce itself on a dispute deriving from their contract.

68. With respect to the first aspect, given that we are dealing with an international contract between indirect members of FIFA and a purely contractual dispute which does not involve FIFA as a party or any sanctions taken by FIFA, the Panel finds that under Swiss law the Appellant and Respondent were entitled to validly adopt between themselves a choice-of-forum clause in favour of State courts (here the common courts of Funchal's Judicial District).

69. Concerning the second aspect, i.e. the scope of the parties' contractual choice-of-forum clause/exclusion of FIFA's competence, the majority of the Panel finds that the intent of the parties to the Second Agreement was clearly to choose the common courts of Funchal's Judicial District as the only body to decide any contractual dispute between them, since clause 5 of the Second Agreement refers to those courts *"For all legal consequences…"* and there is no wording included which indicates the parties deemed the Portuguese courts in question would merely be an appellate body against a primary decision by FIFA; while at the same time this was a commercial contract and there is a presumption under Swiss law that a choice-of-forum is exclusive.

70. For the above reasons, the majority of the Panel finds that when including clause 5 in the Second Agreement the parties' intention was to exclude – in favour of the common courts of Funchal's Judicial District – any resort to a FIFA body in case of a dispute, and finds that such choice of the parties was valid under Swiss law.

71. Having reached to above conclusions, the Panel must now decide what their implications are with respect to the Appellant's prayers for relief n° 1, 2 and 3.

C. The Adjudication of the Appellant's Prayers for Relief n° 1-3

72. With respect to the Appellant's Prayer for relief n° 1 and 2, the consequence of the Panel's above findings is that those prayers must be admitted because as a result of the validly adopted choice-of-forum clause as construed, the Appellant was entitled to object to the competence of the Single Judge of the FIFA PSC and actually did so from the outset of that procedure. Thus, the FIFA PSC erred in considering it was competent to decide on the contractual dispute in question and its decision of 23 April 2013 must be set aside.

73. With regard to the Appellant's prayer for relief n° 3, the Panel finds that Appellant lacks a legal interest to request a declaratory judgment regarding the competence of the common courts of Funchal's Judicial District, because the Panel has decided to admit the Appellant's prayer's for relief n° 1 and 2 and that in addition the jurisdiction of the Portuguese courts in question is a matter for themselves to decide if they are ever seized by one of the parties in the future.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 1 August 2013 by Maritimo da Madeira - Futebol SAD against the decision rendered by the Single Judge of the FIFA Player Status Committee on 23 April 2013 is upheld.

2. The Single Judge of the FIFA Player Status Committee was not competent to decide on the contractual dispute raised in front of it by Desportivo Brasil Participacoes LTDA.

3. The decision rendered by the Single Judge of the FIFA Player Status Committee on 23 April 2013 is set aside.

(…)

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