



Arbitration CAS 2012/A/2944 Genoa Cricket and Football Club S.p.A. v. Club Bella Vista, award of 3 April 2013

Panel: Prof. Petros Mavroidis (Greece), Sole arbitrator

Football

Transfer

Rationale of the solidarity contribution

Amount of the transfer compensation to take into account for assessing the solidarity contribution

1. The solidarity mechanism is meant to redistribute the value of the training given to a player. The new club benefits from the increase of the value of the player, deriving from the training and education provided by all former training clubs, including possibly the transferring club. This system may be compared, to some extent, to the levy of a tax. In accordance with the RSTP, the new club has to retain 5% of the transfer compensation, with the consequence that the amount received by the transferor club is reduced accordingly. The *ratio legis* of this system is that it is easier for the new club to determine the former clubs of the player. The player being at the disposal of the new club, he can assist the latter in this task.
2. According to the RSTP, the solidarity contribution to be distributed to the beneficiaries must be equal to 5% of *“of any compensation, not including training compensation paid to his former club”*. The applicable regulations provide an objective basis for assessing precisely the solidarity contribution, which is directly linked to the amount paid by the new club at the end of the day. Hence, it is irrelevant that the parties to a transfer agreement have contractually decided to divide the transfer compensation into various categories. Indeed, according to the principle of relativity of contract, the contractual terms and conditions of the transfer agreement cannot be opposed to the former clubs, which were not involved in the negotiation of the transfer agreement and which are entitled to their share of solidarity contribution. In particular, there is no reason for the parties to the transfer agreement to be in the position to impose upon the clubs eligible for solidarity contribution, what amount should be part of the transfer compensation and/or the basis on which the solidarity contribution should be calculated. By providing that a proportion of 5% of *“any”* transfer compensation is to be distributed, the FIFA Regulations set in place some sort of security policy, which prevents the clubs eligible for solidarity contribution to be exposed to arbitrary results, abuses and great uncertainty.

I. PARTIES

1. Genoa Cricket and Football Club S.p.A. (hereinafter the “Appellant”) is a football club with its registered office in Genoa, Italy. It is a member of the Federazione Italiana Giuoco Calcio (hereinafter “FIGC”), itself affiliated to the Fédération Internationale de Football Association (hereinafter “FIFA”) since 1905.
2. Club Bella Vista (hereinafter the “Respondent”) is a football club with its registered office in Bahia Blanca, Argentina. It is a member of the Asociación del Fútbol Argentino (hereinafter “AFA”), itself affiliated to the FIFA since 1912.

II. FACTUAL BACKGROUND

A. Background Facts

3. R. (hereinafter the “Player”) was born on 5 February 1982 and is of Argentinean nationality. He was registered as an amateur player with the Respondent from 3 April 1991 until 31 July 2002, i.e. from the age of 9 until the age of 20.
4. During the 2009-2010 season, the Player was registered as a professional with the Argentinean club Atlético Boca Juniors, which signed a transfer agreement with the Appellant on 24 July 2009 (hereinafter the “Transfer Agreement”). Articles 3 and 4 of this document read as follows (as translated from Spanish into English by the Respondent):

“THIRD: CLUB ATLETICO BOCA JUNIORS shall receive for the definitive transfer of the 100% of the aforementioned federative and economic rights of the player the amount of 2.000.000 two million Euro, net.

GENOA will also be responsible for

- a) The player’s percentage of his own transfer, in the percentage of 15% of the transfer price, as established in the CBA 430/75 ie the amount of € 300.000.-*
- b) The 2% levy on the transfer amount owed to AFA according to its own regulations, ie € 40.000.-*
- c) The 0,5% contribution on the transfer price to the Argentine Player’s Union, ie € 10.000.-*
- d) The 7% tax established in the 1212/2003 decree (tax that shall be paid to AFIP – national revenue agency – for any transfer) on the transfer price, ie € 140.000.-*
- e) The stamp duty amounting 1% of the transfer price, owed to the local Government of the City of Buenos Aires, ie € 20.000.-*

Also, GENOA will be responsible for the payments related to the training compensation and/or solidarity mechanism generated by virtue of this transfer.

The price for the definitive transfer of € 2.000.000.- also includes Boca Juniors quota of the training compensation and/or solidarity mechanism.

FOURTH: The price of this definitive transfer and all other obligations inherent to it, amounts Euro 2.510.000.- to be paid by Genoa to Boca according to the following form...

- a) € 510.000 five days after the signature of this agreement.*
- b) € 350.000 as a set off against a credit Genoa has towards Boca for the temporary transfer of the player L. according to the contract dated 15th October 2009.*
- c) € 1.650.000.- in 3 instalments according to the following schedule: € 250.000 01.01.2011, € 650.000 01.07.2011 and € 750.000 01.12.2011.*
- d) Lack of payment of any of the instalments in due date shall lead to the maturity of the rest of it, once 30 days elapsed, making the amount due at the time liquidated and payable. Delay in payment of any of the instalments will carry a 0,2% interest in favor of Boca from the maturity of the instalment until its effective payment”.*

- 5. It is undisputed that the above contract entered into force and that the Player was registered with the Appellant as of 7 August 2009.
- 6. To date, the Appellant has only made the following two (partial) payments to the Respondent in accordance with the solidarity mechanism provided by the applicable FIFA regulations:
 - EUR 12,400.57, the payment of which occurred on 31 March 2010 and is not contested;
 - EUR 8,879.32 paid on 21 April 2011. Regarding this payment, the Respondent claimed that it only received EUR 8,811.76.

B. Proceedings before the FIFA Dispute Resolution Chamber

- 7. On 7 October 2010, the Respondent initiated proceedings with the FIFA Dispute Resolution Chamber (hereinafter the “DRC”) to order the Appellant to pay in its favour its proportion of the solidarity contribution for the transfer of the Player from Club Atlético Boca Juniors on the basis of an alleged transfer compensation of EUR 2,000,000. The Respondent claimed to be entitled to 65% of 5% of EUR 2,000,000, i.e. EUR 65,000 plus interest at a rate of 5% per annum.
- 8. In the course of the examination of the case, the DRC obtained from the AFA a copy of the Transfer Agreement.
- 9. In a decision dated 7 September 2011, the DRC held that:
 - a) according to the Transfer Agreement, the Appellant accepted to pay to Club Atlético Boca Juniors a transfer compensation of EUR 2,510,000 in four different instalments,
 - b) based on the applicable regulations, the Respondent was entitled to receive from the Appellant the proportion of 65% of 5% of the said transfer compensation,
 - c) in case of contingent payments, the solidarity contribution was to be paid on or before 30 days after the date of each payment,

- d) as a result “the transfer compensation to be taken into account for calculation of the solidarity contribution is EUR 1,760,000 (EUR 860,000 + EUR 250,000 + EUR 650,000), remarking that the last instalment [of EUR 750,000] to be paid on 1 December 2011 did not become due yet”,
- e) the Appellant failed to establish that the two partial solidarity contributions paid to the Respondent exceed the total amount of EUR 21,212.33 (EUR 12,400.57 + EUR 8,811.76).

10. As a result, on 7 September 2011, the DRC decided the following:

- “1. The claim of (...) Bella Vista, is partially accepted.
- 2. (...) Genoa Cricket F.C., has to pay to (...) Bella Vista, the amount of EUR 35,987.67 **within 30 days** as from the date of notification of this decision.
- 3. Within the same time limit, (...) Genoa Cricket F.C., has to pay to (...) Bella Vista, default interest of 5% p.a. on each of the following partial amounts:
 - on EUR 27,950, as of 24 August 2009 until 31 March 2010;
 - on EUR 15,549.43, as of 1 April 2010 until 21 April 2011;
 - on EUR 6,737.67, as of 22 April 2011 until the date of effective payment;
 - on EUR 8,125, as of 1 February 2011 until the date of the effective payment;
 - on EUR 21,125, as of 1 August 2011 until the date of the effective payment.
- 4. If the aforementioned amount plus interest 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.
- 5. Any further claims lodged by (...) Bella Vista, are rejected.
- 6. The final amount of costs of the proceeding in the amount of CHF 3,000 is to be paid by (...) Genoa Cricket F.C., **within 30 days** as from the date of notification of the present decision, as follows:
 - 6.1 The amount of CHF 1,000 to FIFA (...)
 - 6.2 The amount of CHF 2,000 to (...) Bella Vista”.

11. On 14 September 2012, the parties were notified of the decision issued by the DRC (hereinafter the “Appealed Decision”).

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

- 12. On 5 October 2012, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (hereinafter “CAS”).
- 13. On 8 October 2012, the CAS Court Office acknowledged receipt of the Appellant’s statement of appeal as well as of its payment of the CAS Court Office fee.
- 14. On 15 October 2012, the Appellant lodged its appeal brief, which contains a statement of the

facts and legal arguments accompanied by supporting documents.

15. On 22 October 2012, FIFA confirmed to the CAS Court Office that it renounced its right to request its intervention in the present arbitration proceeding.
16. On 1 November 2012, the CAS Court Office took good note of the fact that the parties have agreed to a Panel composed of a sole arbitrator.
17. On 28 November 2012, the CAS Court Office acknowledged receipt of the Appellant's payment of the entire amount of the advance of costs. It also informed the parties that the Panel to hear the appeal had been constituted as follows: Sole Arbitrator: Mr Petros C. Mavroidis, Professor, Switzerland.
18. On 17 December 2012, the Respondent filed its answer.
19. Pursuant to article R57 par. 2 of the Code of Sports-related Arbitration (hereinafter the "Code"), the parties were invited to inform the CAS Court Office whether their preference was for a hearing to be held. They expressly agreed to waive a hearing, which the Sole Arbitrator decided not to hold.

IV. SUBMISSIONS OF THE PARTIES

A. The Appeal

20. The Appellant submitted the following requests for relief:

"Requests

1. *We request this Honourable Court to review the present case as to the facts and to the law, in compliance with Article R57 of the Code of Sports-related Arbitration.*
 2. *We request this Honourable Court to issue a new decision that replaces the decision passed by the Dispute Resolution Chamber on 7th September 2011 and sets forth the correct transfer compensation agreed by the Appellant and Club Atlético Boca Juniors on which calculate the correct amount of solidarity contribution due to the Respondent and applicable interest, if any.*
 3. *We request this Honourable Court to declare that no procedural costs are due by the Appellant to FIFA pursuant to the decision passed by the Dispute Resolution Chamber on 7th September 2011.*
 4. *In any case, we request this Honourable Court to order the Respondent to bear all costs incurred with these proceedings.*
 5. *In any case, we request this Honourable Court to order the Respondent to cover all legal expenses of the Appellant related to these proceedings".*
21. The Appellant's submissions, in essence, may be summarized as follows:

- The amount of EUR 2,510,000 disbursed by the Appellant to acquire the Player's services must be broken down into the following two categories:
 - o EUR 2,000,000 corresponding to the actual transfer compensation paid to Club Atlético Boca Juniors for allowing the Player to join the Appellant's squad;
 - o EUR 510,000 *"corresponding to statutory duties levied in Argentina on the transfer of football players"*.
- Based on the clear wording of article 3 of the Transfer Agreement, the solidarity contribution to be paid to the Respondent must exclusively be calculated on the amount actually received by Club Atlético Boca Juniors in its own name and on its own behalf, i.e. EUR 2,000,000. The remaining EUR 510,000 were paid to Club Atlético Boca Juniors only because it *"acted as a depository of the duties levied on the transfer of the Player [...] and was to distribute such duties to the corresponding beneficiaries (the Player, Player's Union, AFA, AFIP and the Government of Buenos Aires)"*.
- *"It can therefore be concluded that the additional monies in the amount of EUR 510,000 set forth in the second paragraph of Section 3 of the Transfer Agreement by Genoa for the transfer of the Player [...] did not constitute a transfer compensation but a set of duties and taxes levied on this transaction in strict application of legal and conventional regulations"*.
- It is undisputed that the Respondent is entitled to 65% of 5% of the transfer compensation paid to Club Atlético Boca Juniors.
- In the case at hand, the solidarity contribution to be paid to the Respondent is EUR 65,000 (= 65% of 5% of EUR 2,000,000). This is the actual amount sought by the Respondent with its initial claim brought before the DRC, which decided to award more than what was asked for. In this regard, *"It was not the duty of the [DRC] to interpret the facts of the case contrario sensu of the intention of the parties or the own statements of the Respondent"*.

B. The Answer

22. On 17 December 2012, the Respondent filed an answer, with the following requests for relief:
- "We request the Court for relief in order to solve the present dispute. Specifically and for the grounds expressed in this answer we request:*
- 1.- *To calculate the amount of the solidarity mechanism due as of the date of the award in the amount of € 60.362.67.- plus interests at a 5% annual rate as calculated in point 3 of this answer.*
 - 2.- *Subsidiary, if the Arbitrator considers he cannot include the last instalment, to set the transfer amount for the calculation of the mechanism in the amount of € 2.510.000.- and to confirm FIFA's decision in its entirety.*
 - 3.- *In any case, to order Genoa to pay all costs and expenses relating to the DRC and the arbitration proceeding.*
 - 4.- *For the reasons explained, to order the claimant to pay a contribution towards the legal fees and other*

expenses incurred by this party, estimated in CHF 10.000.-".

23. The submissions of the Respondent may, in essence, be summarized as follows:

- It is undisputed that the Respondent did not file an appeal against the Appealed Decision. However, given the wording of the Appellant's request for relief, which asks from the CAS Arbitrator to set *"forth the correct transfer compensation agreed by the Appellant and Club Atlético Boca Juniors on which calculate the correct amount of solidarity contribution due to the Respondent and applicable interest, if any"*, it is the opinion of the Sole Arbitrator that he has the discretion to award to the Respondent the amount which he deems fit and just, regardless of the fact that it might be higher than the one foreseen in the Appealed Decision.
- According to the applicable regulations, the solidarity contribution must be calculated on the basis of the effective amount paid by the Appellant to Club Atlético Boca Juniors for the transfer of the Player. The *"calculation pretended by Genoa, only over "net" amounts, is not supported in any way, not by the regulations, nor by the contract either"*.
- Based on the Argentine laws and local regulations, Club Atlético Boca Juniors is the actual debtor of the taxes and other duties mentioned under article 3 par. 2 lit a) to e) of the Transfer Agreement. However, the parties to the Transfer Agreement expressly agreed on the wording of article 3 of the Transfer Agreement, whereby the Appellant accepted a) to bear the said national/local taxes and other duties associated with the transfer of the Player and b) to increase correspondingly the transfer compensation.
- The parties to the Transfer Agreement agreed on a transfer compensation of EUR 2,510,000- to be paid by the Appellant. This amount shall form the basis for the calculation of the solidarity contribution.
- It is undisputed that the Respondent is entitled to 65% of the 5% of the transfer compensation paid to Club Atlético Boca Juniors.
- The *"debt must include interests at a 5% annual rate from the moment Genoa was in default with each instalment"*.
- "As established in the FIFA decision, the calculation shall be made as follows: **Interest: At a 5% annual rate according to the following schedule***
- | | |
|------------------|--|
| - on € 27,950.00 | as of 25 August 2009 until 31 March 2010 |
| - on € 15,549.43 | as of 1 April 2010 until 21 April 2011 |
| - on € 6,737.67 | as of 22 April 2011 |
| - on € 8,125 | as of 1 February 2011 |
| - on € 21,125.00 | as of 2 August 2011 |

- on € 24,375.00 as of 2 January 2012 (instalment not included in the FIFA decision – paragraph 27 – but matured lately)”.

V. ADMISSIBILITY

24. The appeal is admissible as the Appellant submitted it within the deadline provided by article R49 of the Code as well as by article 67 par. 1 of the FIFA Statutes. It complies with all the other requirements set forth by article R48 of the Code.

VI. JURISDICTION

25. The jurisdiction of CAS, which is not disputed, derives from articles 62 ff. of the FIFA Statutes and article R47 of the Code. It is further confirmed by the order of procedure duly signed by the parties.
26. It follows that the CAS has jurisdiction to decide on the present dispute.
27. Under article R57 of the Code, the Sole Arbitrator has the full power to review the facts and the law.

VII. APPLICABLE LAW

28. Article R58 of the Code provides the following:

“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”.

29. Pursuant to article 66 par. 2 of the FIFA Statutes, “[t]he 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”.
30. Regarding the issue at stake, the parties have not agreed on the application of any specific national law. As a result, subject to the primacy of applicable FIFA’s regulations, Swiss Law shall apply complementarily. It can be observed that, in their respective submissions, the parties adopted the same approach.
31. The relevant contract at the basis of the present case was signed before 1 October 2009, which is the date when the 2009 edition of the FIFA Regulations for Status and Transfer of

Players came into force. Pursuant to article 26 par. 1 and 2 of these regulations, the case shall be assessed according to the 2008 edition of the FIFA Regulations for Status and Transfer of Players (hereinafter “RSTP”).

VIII. MERITS

32. It appears that the parties do not contest the application of the RSTP and of Swiss Law, if needed.
33. The Sole Arbitrator also noted that the principle of a solidarity contribution as well as its proportion (65% of 5% of the transfer compensation) to be distributed to the Respondent is undisputed. Hence, these aspects of the Appealed Decision do not need to be addressed any further.
34. As a result, the only issues to be resolved by the Sole Arbitrator in deciding the present dispute are:
 - Should the solidarity contribution be calculated on a basis of EUR 2,000,000 or EUR 2,510,000?
 - What is the interest rate to be applied to the outstanding amounts due by the Appellant to the Respondent?

A. Should the solidarity contribution be calculated on a basis of EUR 2,000,000 or EUR 2,510,000?

(i) In general

35. The solidarity mechanism is meant to redistribute the value of the training given to the Player. The new club (i.e. the Appellant) benefits from the increase of the value of the Player, deriving from the training and education provided by all former training clubs, including possibly the transferring club. This system may be compared, to some extent, to the levy of a tax (CAS 2006/A/1018, par. 18).
36. The RSTP provides so far as material as follows:

Article 21 Solidarity mechanism

If a professional is transferred before the expiry of his contract, any club that has contributed to his education and training shall receive a proportion of the compensation paid to his former club (solidarity contribution). The provisions concerning solidarity contributions are set out in Annexe 5 of these regulations.

Annexe 5 – article 1, first and second sentences – Solidarity contribution

If a professional moves during the course of a contract, 5% of any compensation, not including training compensation paid to his former club, shall be deducted from the total amount of this compensation and distributed by the new club as a solidarity contribution to the club(s) involved in his training and education over the years. This solidarity contribution will reflect the number of years (calculated pro rata if less than one year) he was registered with the relevant club(s) between the Seasons of his 12th and 23rd birthdays (...).

Annexe 5 – article 2 - Payment procedure

1. *The new club shall pay the solidarity contribution to the training club(s) pursuant to the above provisions no later than 30 days after the player's registration or, in case of contingent payments, 30 days after the date of such payments.*
 2. *It is the responsibility of the new club to calculate the amount of the solidarity contribution and to distribute it in accordance with the player's career history as provided in the player passport. The player shall, if necessary, assist the new club in discharging this obligation.*
 3. *If a link between the professional and any of the clubs that trained him cannot be established within 18 months of his transfer, the solidarity contribution shall be paid to the association(s) of the country (or countries) where the professional was trained. This solidarity contribution shall be reserved for youth football development programmes in the association(s) in question.*
 4. *The Disciplinary Committee may impose disciplinary measures on clubs that do not observe the obligations set out in this annexe.*
37. It follows from article 1, Annexe 5 of the RSTP, that the new club (i.e. the Appellant) has to
a) withhold 5% of the transfer compensation to be paid to acquire the Player's services, and
b) split up these 5% between the clubs, where the Player was registered between the ages of 12 and 23 (see FIFA Commentary on the RSTP, ad article 1, Annexe 5 of the RSTP). In other words and in accordance with the RSTP, the new club has to retain 5% of the transfer compensation, with the consequence that the amount received by the transferor club is reduced correspondingly.
38. The *ratio legis* of this system is that it is easier for the new club to determine the former clubs of the Player. The Player being at the disposal of the new club, he can assist the latter in this task (CAS 2006/A/1018).

(ii) The amount to take into account to establish the Respondent's portion of solidarity contribution

39. The Appellant claims that it was the intention of the parties to the Transfer Agreement to limit the solidarity contribution to 5% of EUR 2,000,000, which correspond to the amount actually received by Club Atlético Boca Juniors for the transfer of the Player. The Appellant contends that its position is supported by article 3 of the said contract.
40. The DRC did not share this view as it found that the Respondent was entitled to receive from the Appellant its proportion of 5% of the transfer compensation actually paid by the

Appellant to Club Atlético Boca Juniors, i.e. EUR 2,510,000.

41. With regard to the compensation paid by the Appellant to Club Atlético Boca Juniors for the Player's transfer, the following is foreseen in the Transfer Agreement:

- Article 3 of the Transfer Agreement:
 - "*CLUB ATLETICO BOCA JUNIORS shall receive for the definitive transfer of the 100% of the aforementioned federative and economic rights of the player the amount of 2.000.000 two million Euro, net*" (article 3, par. 1 of the Transfer Agreement).
 - "*GENOA will also be responsible for [the payment of EUR 510,000 corresponding to the taxes and other duties mentioned under article 3 par. 2 lit a) to e)]*" (emphasis added – article 3, par. 2 of the Transfer Agreement).
 - "*Also, GENOA will be responsible for the payments related to the training compensation and/or solidarity mechanism generated by virtue of this transfer*" (emphasis added – article 3, par. 3 of the Transfer Agreement).
 - "*The price for the definitive transfer of € 2.000.000.- also includes Boca Juniors quota of the training compensation and/or solidarity mechanism*" (article 3, par. 4).
- Article 4. par. 1 of the Transfer Agreement
 - "*The price of this definitive transfer and all other obligations inherent to it, amounts Euro 2.510.000.- to be paid by Genoa to Boca according to the following form*" (emphasis added).

42. It is undisputed that the Appellant paid to Club Atlético Boca Juniors EUR 2,510,000 and that the Appellant did not retain the 5% provided for under article 1, Annex 5 of the RSTP.

43. The fact that the Appellant did not retain the 5% of solidarity contribution is consistent with article 3 par. 3 as well as article 4 par. 1 of the Transfer Agreement. According to these provisions, the Appellant undertook to pay a) the taxes and other duties in an amount of EUR 510,000 and b) the "*payments related to the training compensation and/or solidarity mechanism*" in addition to the transfer compensation of EUR 2,000,000. This is made clear by the wording of articles 3 and 4 as highlighted here above (or, in the prevailing Spanish language "*Estarán además a cargo de Genoa*"; [...] "*Asimismo estarán además a cargo de Genoa*"; "*El precio de la transferencia definitiva y demás obligaciones inherentes a la misma, asciende a la suma de € 2.510.000*").

44. In light of the above, the outcome of the present dispute depends on whether the Appellant can oppose to the Respondent the fact that the parties to the Transfer Agreement expressly set the price of "*the definitive transfer of the 100% of the aforementioned federative and economic rights of the player*" at EUR 2,000,000, regardless of the fact that the Appellant paid EUR 2,510,000 to Club Atlético Boca Juniors in order to acquire the Player's services.

45. The Sole Arbitrator observes that according to article 1, Annexe 5 of the RSTP, the solidarity contribution to be distributed to the beneficiaries must be equal to 5% of "*of any compensation,*

not including training compensation paid to his former club". The applicable regulations provide an objective basis for assessing precisely the solidarity contribution, which is directly linked to the amount paid by the new club at the end of the day. In the present case, it is undisputed that this amount is EUR 2,510,000.

46. Hence, it is irrelevant that the parties to the Transfer Agreement have contractually decided to divide the transfer compensation into two categories: on the one hand, the *"price of the definitive transfer"* (i.e. EUR 2,000,000) and on the other hand *"all other obligations inherent to [the price of the definitive transfer]"* (i.e. EUR 510,000). The Appellant's contention according to which the solidarity contribution to be paid to the Respondent must exclusively be calculated on the amount actually received by Club Atlético Boca Juniors in its own name and on its own behalf is not supported anywhere in the RSTP or elsewhere in the FIFA Regulations or Swiss law.
47. According to the principle of relativity of contract, a contract cannot confer rights or impose obligations arising under it on any person other than the parties to the contract (Judgement of the Swiss Federal Tribunal of 30 November 2011, 4A_417/2011, consid. 2.1 and 2.2). The contractual terms and conditions of the Transfer Agreement can therefore not be opposed to the former clubs, which were not involved in the negotiation of the Transfer Agreement and which are entitled to their share of solidarity contribution. In particular, there is no reason for the parties to the Transfer Agreement to be in the position to impose upon the clubs eligible for solidarity contribution, what amount should be part of the *"price of the definitive transfer"* or not, and/or the basis on which the solidarity contribution should be calculated. This is particularly true in the present case, where the Appellant contractually undertook to bear Club Atlético Boca Juniors' own costs and, consequently, accepted to increase the amount of the transfer compensation. As a matter of fact, the Appellant agreed to take the responsibility for the payment of:
 - *"The player's percentage of his own transfer, in the percentage of 15% of the transfer price"*. This obligation allegedly stems from article 9 of an Argentinean Collective Bargaining Agreement (CBA 430/75). According to this provision, the *"transferring club"* is responsible for the payment of this amount.
 - *"The 2% levy on the transfer amount owed to AFA according to its own regulations, ie € 40.000.-"*. This obligation allegedly stems from article 214 of the AFA general regulations and is the responsibility of *"both clubs"*.
 - In their respective submissions, the parties to the present proceeding did not make it clear who is the actual debtor of the taxes and other contributions provided under article 3 par. 2 letters c) to d) of the Transfer Agreement. However, and in view of the beneficiaries of these contributions, it cannot be ruled out that Club Atlético Boca Juniors is responsible for their payment. The Sole Arbitrator is comforted in his position by the fact that the Appellant did not pay those amounts directly to the said beneficiaries but to Club Atlético Boca Juniors.
 - *"Also, GENOA will be responsible for the payments related to the (...) solidarity mechanism generated by virtue of this transfer"*. For the reason explained here above, the Appellant did not retain 5% of the transfer compensation and accepted to be held *"responsible for the*

payments related to the training compensation and/or solidarity mechanism generated by virtue of this transfer” (see article 3 par. 3 of the Transfer Agreement). It can be here observed that the Transfer Agreement does not specify the amount of the solidarity contribution.

48. The consequence of the above is that the Appellant agreed to pay EUR 2,510,000 to acquire the Player’s services (see article 4 of the Transfer Agreement). There is no reason why this amount should not be used as the basis for the calculation of the solidarity contribution. This is a very objective parameter on which the former training clubs can rely safely in order to assess precisely the solidarity contribution, to which they are entitled. By providing that a proportion of 5% of “any” transfer compensation is to be distributed, the FIFA Regulations set in place some sort of security policy, which prevents the clubs eligible for solidarity contribution to be exposed to arbitrary results, abuses and great uncertainty.
49. As a conclusion, the Sole Arbitrator finds that the Respondent is entitled to 65% of 5% of EUR 2,510,000; i.e. EUR 81,575.

(iii) What amount has the Respondent received from the Appellant as solidarity contribution?

50. To date, the Appellant made the following two partial payments to the Respondent in accordance with the solidarity mechanism provided by the RSTP:
 - EUR 12,400.57, the payment of which occurred on 31 March 2010 and is not contested.
 - EUR 8,879.32 paid on 21 April 2011. Regarding this payment, the Respondent claimed that it only received EUR 8’811.76.
51. Regarding the second partial payment, the Sole Arbitrator observes that the Appellant did not adduce any evidence in the present proceeding in order to establish the amount effectively paid out on 21 April 2011. Under these circumstances, the Sole Arbitrator finds no reason to depart from the position expressed by the DRC in the Appealed Decision (par. 20 to 22, page 6):

“In this regard, the DRC noted that the [Appellant] did not provide a translation of the documents regarding the alleged payment into one of the official FIFA languages (d. point 1.11).

In this context, the Chamber recalled that according to the legal principle of the burden of proof, any party claiming a right on the basis of an alleged fact shall carry the burden of proof (d. art. 12 par. 3 of the Procedural Rules).

In view of the above and of all the circumstances of the case, the members of the DRC deemed that such documents could not be considered and, therefore, concluded that the [Appellant] failed to prove that the amount of EUR 8,879.32 was effectively paid. As a consequence, the Chamber considered that the payment received by the [Respondent] on 21 April 2011 was in the amount of EUR 8,811.76”.

(iv) Conclusion

52. Considering the fact that the Respondent is entitled to a solidarity contribution of EUR 81,575 and taking into account the partial payment of EUR 21,212.33 (12,400.57 + 8,811.76), the Appellant failed to pay to the Respondent the outstanding amount of EUR 60,362.67, default interest not included.

B. What is the interest rate to be applied to the outstanding amounts due by the Appellant to the Respondent?

53. According to the Transfer Agreement, *“Delay in payment of any of the instalments will carry a 0,2% interest in favor of Boca from the maturity of the instalment until its effective payment”*.

54. However, and for the reasons exposed above, the terms and conditions of the Transfer Agreement cannot be opposed to the Respondent, which was not a party to the contractual relationship between the Appellant and Club Atlético Boca Juniors.

55. Consequently and as regards to the interest and in the absence of a specific binding contractual clause, the Sole Arbitrator can only apply the legal interest due pursuant to article 104 of the Swiss Code of Obligations. This provision foresees that the debtor, on notice to pay an amount of money, owes an interest at the rate of 5 % per annum. Where a deadline for performance of the obligation has been set, a notice is not necessary (see article 102 of the Swiss Code of Obligations; THÉVENOZ L.; in THÉVENOZ/WERRO (eds.), Commentaire Romand, Code des obligations I, 2ème edition, 2012, ad art. 102 CO, N. 26, p. 806).

56. Pursuant to article 2, Annexe 5 of the RSTP and in case of contingent payments, the solidarity contribution shall be paid no later than 30 days after the date of each payment.

57. Consequently, considering the instalments stipulated under article 4 of the Transfer Agreement, the Appellant is liable to pay to the Respondent the following interests:

- The first instalment of EUR 860,000 fell due 5 days after the signature of the Transfer Agreement, which occurred on 24 July 2009. Therefore, the solidarity contribution amounts to 3.25% (i.e. 65% x 5%) of EUR 860,000 = EUR 27,950. Hence, 5% interest on EUR 27,950 starts running as of 28 August 2009 until 31 March 2010 (i.e. when the first partial payment of EUR 12,400.57 was made).
- 5% interest on EUR 15,549.43 (the difference between the EUR 27,950 and 12,400.57) starts running as of 1 April 2010 until 21 April 2011 (i.e. when the second partial payment of EUR 8,811.76 was made).
- 5% interest on EUR 6,737.67 (the difference between the EUR 15,549.43 and 8,811.76) starts running as of 22 April 2011.
- The second instalment of EUR 250,000 fell due on 1 January 2011. Therefore, the solidarity contribution amounts to 3.25% of EUR 250,000 = EUR 8,125. Hence, 5%

interest on EUR 8,125 starts running as of 1 February 2011.

- The third instalment of EUR 650,000 fell due on 1 July 2011. Therefore, the solidarity contribution amounts to 3.25% of EUR 650,000 = EUR 21,125. Hence, 5% interest on EUR 21,125 starts running as of 1 August 2011.
 - The last instalment of EUR 750,000 fell due on 1 December 2011. Therefore, the solidarity contribution amounts to 3.25% of EUR 750,000. Hence, 5% interest on EUR 24,375 starts running as of 1 January 2012.
58. In the Appealed Decision, the DRC did not take into consideration the last instalment of EUR 750,000 for the calculation of the litigious solidarity contribution. As a matter of fact, this instalment did not become due when the DRC passed its decision on 7 September 2011. Under these circumstances, the DRC ordered the Appellant to pay to the Respondent *“the amount of EUR 35,987.67 **within 30 days** as from the date of notification of this decision”*. The Appealed Decision was notified on 14 September 2012. Insofar as the Appealed Decision must be confirmed as regards the solidarity contribution payable to the Respondent on the basis of the three first instalments, the Appellant is liable to pay 5% interest on EUR 35,987.67 as of 15 October 2012.

C. Conclusion

59. In its request for relief, the Appellant asked the Sole Arbitrator to *“issue a new decision that replaces the decision passed by the Dispute Resolution Chamber on 7th September 2011 and sets forth the correct transfer compensation agreed by the Appellant and Club Atlético Boca Juniors on which calculate the correct amount of solidarity contribution due to the Respondent and applicable interest, if any”*.
60. In view of the request for relief, made without any reservation whatsoever, calling for *“the correct amount of solidarity contribution due to the Respondent and applicable interest”*, the Sole Arbitrator understands that he is asked to make the relevant calculation and ascertain the solidarity contribution for which the Appellant is liable, regardless of the amounts actually awarded by the previous instance. This finding is consistent with CAS precedent in similar situation (CAS 2011/A/2354).
61. In light of the above, the Sole Arbitrator reaches the conclusion that the Appellant must pay to the Respondent the following amounts:
- EUR 35,987.67 as decided by the DRC in the Appealed Decision;
 - EUR 24,375 corresponding to the solidarity contribution stemming from the last instalment;
 - Default interest of 5% per annum on the following amounts:
 - on EUR 27,950 as of 28 August 2009 until 31 March 2010;

- on EUR 15,549.43 as of 1 April 2010 until 21 April 2011;
- on EUR 6,737.67 as of 22 April 2011;
- on EUR 8,125 as of 1 February 2011;
- on EUR 21,125 as of 1 August 2011;
- on EUR 24,375 as of 1 January 2012;
- on EUR 35,987.67 as of 15 October 2012.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Genoa Cricket and Football Club S.p.A. against the decision issued by the FIFA Dispute Resolution Chamber on 7 September 2011 is upheld insofar as the Sole Arbitrator is requested to *“calculate the correct amount of solidarity contribution due to the Respondent and applicable interest”*.
2. The decision issued by the FIFA Dispute Resolution Chamber on 7 September 2011 is confirmed, the points 2 and 3 of its operative part being nevertheless amended as follows:
 - Genoa Cricket and Football Club S.p.A. is ordered to pay to Club Bella Vista EUR 60,362.67 (35,987.67 + EUR 24,375);
 - Genoa Cricket and Football Club S.p.A. is ordered to pay to Club Bella Vista the following default interest of 5% per annum on:
 - EUR 27,950 as of 28 August 2009 until 31 March 2010;
 - EUR 15,549.43 as of 1 April 2010 until 21 April 2011;
 - EUR 6,737.67 as of 22 April 2011;
 - EUR 8,125 as of 1 February 2011;
 - EUR 21,125 as of 1 August 2011;
 - EUR 24,375 as of 1 January 2012;
 - EUR 35,987.67 as of 15 October 2012.
3. (...).
4. (...).
5. All other or further claims are dismissed.