Arbitration CAS 2012/A/2985 Racing Club v. Genoa Cricket and Football Club S.p.A., award of 2 September 2013

Panel: Mr Pedro Tomás Marqués (Spain), President; Mr Hernán Ferrari (Argentina); Mr Hendrik Kesler (The Netherlands)

Football
Management agreement entered into between a bankrupt club and a company constituted under national law
Inapplicability of the lis pendens principle
Nature of the relationship between a club and a company managing its football related activities
Direct representation of the club by a company
Club's right arising from a transfer agreement entered into between a representative company and a third club
Legal interests

1. **There is no identity as to the parties involved in a dispute brought before a national court i.e. a club and a company managing its football related activities and the parties to an arbitration before the CAS that are two football clubs. Under these circumstances, the *lis pendens* principle does not apply.**

2. **It is not reasonable to conclude that a company which entered into a management agreement with a club within the framework of the club's bankruptcy proceedings governed by national law and constituted with the aim of carrying out the club's related football activities, was acting in its own name and on its own behalf when performing its contractual duties. The company must be considered as an agent, i.e. a legally independent commercial intermediary, which undertakes to conduct certain business or provide certain services in accordance with the terms of the contract.**

3. **According to Swiss law and to the Swiss Federal Tribunal, direct representation exists where an agent acts in the name and on behalf of the principal. If the agent acts within the scope of his authority, his acts bind the principal and the third party directly, but not himself. The requirements of direct representation are met where a company is authorised to act on behalf of a club and where it signed a transfer agreement with another club in its capacity as the club's manager and administrator, which was clearly disclosed to the other club. The latter cannot ignore that only a club and not a private company can transfer a player's federative rights and the proportion of economic rights it eventually holds.**

4. **As a consequence of the direct representation of a club by a company managing its related football activities, the rights and obligations arising from a transfer agreement concluded by the company accrue directly to the club. In this respect, the club to which a player was transferred and which received an amount for the subsequent transfer of**

the player to a third club is responsible to pay to its contracting partner a percentage of such amount on the basis of the transfer agreement.

5. **In the absence of a specific contractual clause related to the late payment of the debt arising out of the transfer agreement, the legal interest due pursuant to Article 104 of the Swiss Code of Obligations are applicable. 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 by agreement, a notice is not necessary.**

I. PARTIES

1. Racing Club Asociación Civil (hereinafter the "Appellant") is a football club with its registered office in Avellaneda, Argentina. It is a member of the Asociación del Fútbol Argentino (hereinafter "AFA"), itself affiliated to the Fédération Internationale de Football Association (hereinafter "FIFA") since 1912.

2. Genoa Cricket and Football Club S.p.A. (hereinafter the "Respondent") is a football club with its registered office in Genoa, Italy. It is a member of the Italian National Football Association (Federazione Italiana Giuoco Calcio), itself affiliated to FIFA since 1905.

II. FACTUAL BACKGROUND

A. Background facts

3. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

a) The Rescue Plan by means of Private investment in Argentinean professional football

4. In March 2000 and in view of the alarming number of football clubs experiencing financial difficulties, AFA approved a *"Rescue Plan by Means of Private Investment in Professional Football"* (hereinafter the "Rescue Plan"). This plan established a partnership between Argentinean clubs in fragile economic conditions and private legal entities, *"capable of providing all necessary resources to undertake a viability project together, focused on the development of the professional football activity of the particular club concerned, within a scope of legal and economic obligations which guarantee the patrimonial*

stability and the ordinary development of the activities of the institutions" (article 1). The main purpose of the legal entity *"shall be the development of the activity that gives rise to such relationship"* (article 3).

5. The terms of the partnership were to be set forth in an agreement, whereby the legal entity could namely be empowered to manage *"the club professional football activity, including any assignment of rights concerning tangible and intangible assets and services which are necessary for the development of the professional football activity"* (article 1.1). *"In all cases, investment agreements shall clearly express and guarantee a total settlement of debts scheme of the affiliate institution"* (article 9).

6. This contractual relationship was to be incorporated in a viability plan, which must *"clearly state the reasons on which the plan is based and its economic and financial conditions that may enable the club, in the short or long term, to ordinarily continue to perform the professional football activity"* (article 2.a).

7. According to the terms of the Rescue Plan, both the viability plan and the agreement between the club and the legal entity were to be approved by AFA.

b) Act No 25.284 Special Regime concerning the Management of Sport entities undergoing Economic Difficulties (hereinafter "Act No 25.284")

8. In July 2000, *"the Argentine´s National Congress"* passed the Act No 25.284, the main characteristics of which can be summarised as follows:

- The Act No 25.284 is applicable to any civil association *"engaged in the development of sport activities at either the amateur or professional level, which has been declared bankrupt"*.
- Its purpose is *"a) to protect sport as a social right; b) to continue the activities developed by the entities mentioned in the previous article, in order to obtain income for the benefit of creditors and employees of such entity, through appropriately and economically sustainable means; c) to settle debts by means of a feasible, proper, professional and judicially controlled trust management; d) to guarantee the creditors' rights to receive repayment of the debts owed to them by the debtor; e) to overcome insolvency; f) to recover the ordinary institutional operation of the entity"*.
- A fiduciary body must be appointed and, apparently, carry out the functions previously performed by the management of the sport entity undergoing economic difficulties. The members of this body must namely:

  "a) respect, in any activity they may carry out, the principles of prudence, austerity and rationality of expenses pursuant to the particular interests appointed to him or her, on the basis of reliability and good faith.

  b) take any appropriate measure during the performance of his or her activities for the purpose of not incurring new debts, performing his or her activities with the prudence and diligence of a good businessman.

  (…)

  f) identify any asset managed under the trust and determine their sale value at the time of their distribution.

g) make an annual budget of income and expenses. (…)

h)a ppoint technical and administrative staff necessary for the ordinary operation of the institution.

(…)

j) submit a quarterly report to the Court containing all information about the progress of the administration. (…)".

c) Management agreement between the Appellant and Blanquiceleste SA Association

9. On 13 July 1998, the Appellant was declared bankrupt.

10. In August 2000, the competent public authority approved a reorganisation plan and put the Appellant under administration. In this context, the company Blanquiceleste SA Association (hereinafter "Blanquiceleste") was constituted with the aim of carrying out the Appellant's football related activities.

11. On 29 December 2000, the relationship between the Appellant and Blanquiceleste was formalised in an agreement approved by the competent decision-making bodies and public authorities (hereinafter the "Management Agreement").

12. This Management Agreement was signed, on the one hand, by Blanquiceleste and, on the other hand, by the Appellant *"represented by the Fiduciary Body created by Act No 25.284"*. This contract provides so far as material (as translated from Spanish into English by the Appellant):

- *"WITNESSETH*

  The Club is under bankruptcy proceedings and in serious danger that its football team loses the first category; this is the consequence of the economic and financial difficulties the Club has undergone which prevented the Club from having the necessary resources to effectively promote the development of the amateur football and from having a competitive team of professional football. (…)

  In spite of Act No 25.284 which created a special regime concerning the management of sports entities undergoing economic difficulties; the Club, taking into account its prestige and precedents, is still facing difficulties to promote, develop and prompt the practice and competition in football in all the categories and to participate with competitive teams in local, regional, national or international tournaments.

  Due to the numerous years and important social impact of the Club, the adoption of a comprehensive solution to the serious problem it is going through is justified.

  Such solution's success depends on its capacity to bring about the discharge of the bankruptcy, the restructuring of the Club's economy, and the necessary funds to carry out improvements on the premises and resources to form a competitive professional team and also improve the inferior divisions and take care of the new players which may be discovered on such inferior divisions, as well as promote amateur activities apart from football.

  [Blanquiceleste] has submitted a proposal to accomplish those purposes.

  (…)

[Blanquiceleste] is an expert in sportive management and possess the economic, financial, coach and human resources to carry out the necessary investment, promote the development of amateur football, and promote the development of a competitive professional team.

[Blanquiceleste] and the Club have decided to enter into an agreement (…) *by means of which [Blanquiceleste] shall be in charge of the operation, administration, trading and management, by its own, freely and autonomously the football activities of the Club* (…).

The Club shall receive part of the economic benefit derived from the transfer of any of the Club's player's economic rights (as defined herein). To that purpose, the Club shall control the transfer operation by means of a Football Activity body or committee".

- *"ARTICLE II Purpose*

  The purpose of this agreement is the assignment by the Club to [Blanquiceleste] of the operation, administration, trading and management, by its own and for its own, free from limitation or condition with freedom and autonomy of the football activities of Asociación Civil Racing Club. (…)

  The parties herein expressly state that this agreement shall not imply the creation of any type of association between them nor a society relationship".

- *"ARTICLE III Football Activities*

  3.1 Football activities encompasses all activities related to professional and amateur football of the Club, including: the acquisition and assignment of rights, selection of coaching and medical bodies, trainers and helpers (…)*, and any other activity which may be directly or indirectly related to football in the Club.* (…).

  [Football] related activities shall include in particular the following: (…) *(b) Any assignment of player's rights. In the event of assignment of rights to third parties, the Club shall have the rights which are legally entitled to according to Article IX, 9.2".*

- *"Article IV Rights and powers of the Manager*

  (…)

  4.3 [Blanquiceleste] shall be in charge of the operation, administration, trading and management, by its own, freely and autonomously of the football activities of the Club. The Club shall not interfere on these activities, except for the powers of supervision granted herein".

- *"Article VI Control of [Blanquiceleste's] activities*

  6.1 Duty to inform. Every four months, [Blanquiceleste] shall draft a report about the football activity (hereinafter referred to as "Report") which, at least, shall include the following elements. (a) Current condition of works in progress; (b) Football players of the Club physical and sporting conditions (c) A report from the coaching staff about the conditions and development of all the football divisions of the Club (…) (f) A report about the management and the balance sheet with the opinion of the external auditor.

This information shall be submitted to the Football Activity Committee for its analysis and that Committee shall then send it to the Directive Commission. After ten days since its submittal without objections by the Committee, such report shall be regarded as implicitly approved by the Club".

- *"ARTICLE VII Rights and obligations of the Club*

  (…)

  7.1 Negative Obligations. The Club (…) shall avoid the performance of any act related, directly or indirectly, to football activities; unless there exists a prior report or binding and written direction made by [Blanquiceleste]. This exception is only and exclusively for those acts that due to some Act (for example A.F.A. Rules) have to be performed by the Club itself. In the event such Act expires, those acts shall be exclusively performed by [Blanquiceleste].

  Consequently, the Club is forbidden from carrying out any dealings or management related to the acquisition or assignment of players' rights or of any other right which is included under the category of football activities. It is as well absolutely forbidden to receive any payment or guarantee or any other document of third parties or purchaser connected to an assignment of rights; as well as to execute any other transaction included on the category of football activities. (…)

  In addition, the Club undertakes these special obligations: (…)

  c) Comply with its obligations as employer of the players; except for: payment of wages, bonuses and allowances; since these obligations shall be complied with by [Blanquiceleste], although for and on behalf of the Club. (…) The funds for payment of those obligations shall be exclusively provided for by [Blanquiceleste]. (…)

  j) Immediately following the notification or directive of [Blanquiceleste] or Trustee that the sum of money from any assignment of rights have been deposited; request the Directive Commission to approve the registration of such player's federative rights in favor of the acquiring club or in favor of the club established by the acquiring club. (…)

  n) Sign, without delay, assignment of rights documents of players registered in the Club, under the process and conditions established in writing by [Blanquiceleste]. (…)

  7.4 (…) The Directive Commission shall carry out acts related to football activities as required by [Blanquiceleste] when due to legislation, rules or custom those acts shall be carried out directly by the Club and cannot be carried out by [Blanquiceleste] or representative".

- *"Article IX Benefits and Funds for the Club*

  9.1 The Club shall receive funds created by the assignment of rights of the Club's players as follows:

  (a) Professional players registered in the name of the Club prior to this agreement

  (b) Amateur players over 18 years old registered in the name of the Club prior to this agreement

  (c) Amateur players of less than 18 years old registered in the name of the Club prior to this agreement

  (d) Amateur or professional players registered in the name of the Club following the subscription and prior to the expiration of this agreement

9.2 Distribution of Funds Criteria. The net result from assignment of rights of players mentioned on 9.1 shall be distributed as follows:

(a) Players mentioned on 9.1 (a): 20% (…) for [Blanquiceleste] and 80% (…) for the Club
(b) Players mentioned on 9.1 (b): 40% (…) for [Blanquiceleste] and 60% (…) for the Club
(c) Players mentioned on 9.1 (c): 50% (…) for [Blanquiceleste] and 50% (…) for the Club
(d) Players mentioned on 9.1 (d): 80% (…) for [Blanquiceleste] and 20% (…) for the Club".

d) The Transfer Agreement

13. D. (hereinafter the "Player") was born on 12 June 1979 and is of Argentinean nationality. He was registered with the Appellant as an amateur player from 1990 until 2000 and then as a professional from season 2000/2001 until season 2003/2004. His last contract signed with the Appellant was a fix-term employment agreement, effective from 1 July 2002 until 30 June 2004.

14. On 13 January 2004, Blanquiceleste signed a transfer agreement with the Respondent (hereinafter the "Transfer Agreement"). This contract provides so far as material (as translated from Italian into English by the Appellant):

"(…)

I. Pursuant to a Disposition laid down by Enrique Gerosteguí Esq., current judge at the Civil and Commercial Court No 16 of the Judicial Department of La Plata City, Argentina; [Blanquiceleste] is vested with the power to manage, conduct, trade and administrate [the Appellant's] football related activities; on its own and for its own, free from any restriction, limitation or condition; freely and autonomously.

II. The administration mentioned on the previous clause confers [Blanquiceleste], among other rights and powers, the capacity to execute agreements for loan or acquisition; of any type and title, of players' federative and economic rights.

III. What has been established shall not be construed as to prevent [the Appellant] from taking the position of holder of the federative rights of any of its players in compliance with binding rules of FIFA.

IV. [The Player] (…) is currently under a professional football player agreement with [Blanquiceleste].

V. [Blanquiceleste] declares it is the exclusive owner of the federative and economic rights of the player.

(…)

VIII. [The Respondent] confirmed that [Blanquiceleste]; in its capacity as manager of the football related activities of [the Appellant]; possesses extensive powers to carry out the transfer of the PLAYER's federative and economic rights.

ACCORDING WITH THE ABOVEMENTIONED TERMS; THE PARTIES AGREE AS FOLLOWS:

(…)

2. Purpose.

The purpose of this agreement is to establish the conditions under which [the Respondent] shall pay [Blanquiceleste] for the transfer of the 100% of the federative rights and 75% of the economic rights of the PLAYER. (…)

3. Obligations of [Blanquiceleste].

Pursuant to this agreement, [Blanquiceleste] is bound to apply all relevant proceedings in order to obtain the issuance of the International Transfer Certificate (ITC) of the player which is necessary for the registration of the PLAYER as a member of [the Respondent's] professional team.

4. Transfer Price.

In exchange for the transfer of the PLAYER from [Blanquiceleste] to [the Respondent]; the parties have established a transfer compensation or final price. Such compensation in exchange for the federative rights and 75% of the economic rights consists of the sole and total sum of € 1,602,500.00 (…).

5. Payment Method.

The compensation or transfer price established in Clause 4 and any other payment due which shall be made by [the Respondent] shall be deposited as follows (…) into [Blanquiceleste] bank account (…).

7. Player's sale to third parties and parties' obligations.

(…)

(c)(…) the sum of 25% of the economic rights - of which such club is owner- shall be paid by [the Respondent] proportionately and simultaneously with the payments received by [the Respondent] from the new club to which the PLAYER will be assigned.

(…)

11. Applicable law.

It is expressly agreed by the parties that this agreement shall be governed by FIFA rules, specially the rule laid down on September 1st, 2001.

12. Consent and Ratifications.

[Blanquiceleste] is bound to obtain the express consent with the terms of this transfer agreement of Mr. Carlos Ves Losada Esq. and certified public accountant Eduardo H. Gilberto; in their capacity as members of Racing Club Asociación Civil Trusteeship which pursuant to Act No 25.284 Record name: "Racing Club Asociación Civil about bankruptcy" directs to the trial judge of the Civil and Commercial Court No 16 of the Judicial Department of La Plata City, Argentina; who under current legislation and due to the current situation of the proceedings is the legal representative of [the Appellant]".

15. It is undisputed that a) the above contract entered into force, b) the Player's International Transfer Certificate was delivered and c) the Player was registered with the Respondent.

16. On 1 June 2004, the Respondent issued a written statement, whereby it committed itself to pay to Blanquiceleste 25% of the amounts received following the Player's transfer to another club. It declared that (as translated from Italian into English by the Appellant) *"Such sum belongs to [Blanquiceleste] and shall be paid by [the Respondent] subject to the receipt by [the Respondent] of the transfer price by the new acquiring club. This payment obligation shall be understood as the definite and irrevocable intent of [the Respondent]; as well as the waiver to use any other rule of any origin or source that may prevent the agreed payment to take place"*.

17. During 2005 it is undisputed that the Player was initially loaned to Real Zaragoza SAD, a football club with its registered office in Zaragoza, Spain (the "Zaragoza") for the seasons 2005-2006 and 2006-2007 in exchange for the sum of EUR 2,000,000 and, according to said loan agreement Zaragoza was granted a definitive transfer option in the amount of EUR 5,000,000 to be exercised before 30 June 2007.

18. On 19 June 2007 the Spanish club exercised its option and the Respondent received EUR 5,000,000 for the final transfer of the Player to Zaragoza.

B. Proceedings before the Single Judge of the FIFA Player's Status Committee

19. On 13 January 2004, respectively on 31 October 2007, Blanquiceleste initiated proceedings with FIFA against the Respondent. Both times, it based its claim on the Transfer Agreement.

a) First FIFA proceedings

20. Blanquiceleste filed an application with FIFA over the Respondent's failure to pay the full transfer fee provided under articles 4 and 5 of the Transfer Agreement.

21. In his decision dated 13 April 2005, the Single Judge of the FIFA Player's Status Committee noted that on *"13 January 2004, a transfer contract was signed between [Blanquiceleste] and Genoa Cricket and Football Club, Italy, in order to transfer the player D. to the Italian club. The compensation agreed was of the total amount of EUR 1,602,500.* (…) *On 18 August 2004, [Blanquiceleste] approached FIFA and informed it that, to that date, the Argentinean club had only received the amount of EUR 100,000 (payment effected on 10 August 2004) corresponding to a part payment of the instalment of EUR 500,000 due on 13 July 2004. The outstanding compensation claimed was, at that date, EUR 1,300,000. In addition, the Argentinean club claimed, in accordance with the transfer agreement, a monthly 3% interest rate on all outstanding amounts"*.

22. Following the opening of the FIFA proceedings, the Respondent made further payments and the amount due was eventually reduced to EUR 700,000.

23. On 13 April 2005, the Single Judge of the FIFA Player's Status Committee decided the following:

"1. The claim of Blanquiceleste - Racing Club is partially accepted;

2. Genoa Cricket and Football Club has to pay the amount of EUR 700,000 to Blanquiceleste - Racing Club. (…)".

24. Blanquiceleste's standing to appear as a party in FIFA proceedings was not called into question and neither was the fact that it was acting on behalf of the Appellant. It is undisputed that the decision of 13 April 2005 entered into force.

b) Second FIFA proceedings

25. On 31 October 2007, Blanquiceleste initiated proceedings with FIFA to order the Respondent to pay in its favour EUR 1,250,000, representing 25% of EUR 5,000,000 paid by Zaragoza for the transfer of the Player. Blanquiceleste based its claim on article 7 (c) of the Transfer Agreement.

26. On 3 June 2008, the Management Agreement was terminated by a court ruling.

27. Later in June 2008, confirmed by Order of the National Court of Original Jurisdiction of Buenos Aires on 7 July 2008, Blanquiceleste was declared bankrupt.

28. On 13 October 2009, the Appellant informed FIFA that Blanquiceleste was no longer its administrator and that it had recovered its institutional activities. Therefore, it argued that it should legitimately be entitled to take Blanquiceleste's place as claimant in the proceedings initiated before FIFA on 31 October 2007.

29. The Appellant was then authorised to participate as a party in the proceedings before FIFA.

30. In a decision dated 24 April 2012, the Single Judge of the FIFA Player's Status Committee observed the following:

- The parties to the Transfer Agreement were, on the one hand, Blanquiceleste and, on the other hand, the Respondent. In this regard, the Single Judge of the FIFA Player's Status Committee noted that this contract was signed by Blanquiceleste's Vice-president, the Respondent's President and the Player but not by the Appellant.
- The fact that Blanquiceleste and the Appellant formed two separate legal entities was substantiated by a) point I of the Transfer Agreement, b) the Management Agreement signed by them on 29 December 2000, c) the Appellant's declaration of 13 October 2009 according to which Blanquiceleste was not its administrator anymore and d) the fact that the payments arising under the Transfer Agreement were made by the Respondent on Blanquiceleste's bank account.

31. Based of the foregoing, the Single Judge of the FIFA Player's Status Committee decided to reject the claim of the Appellant *"since the latter was not a party to the said [Transfer Agreement] and that, therefore, there is no contractual basis for its claim to succeed".*

32. With regard to the fact that, in the previous FIFA proceedings, the Respondent accepted that Blanquiceleste was acting on behalf of the Appellant, the Single Judge explained that *"during the investigation in question, which led to a decision adopted by the Single Judge of the Players' Status Committee on 13 April 2005, no party had contested the legitimacy of the Claimant to lodge the cited claim in front of FIFA and that such an issue was therefore not raised at the time"*.

33. As a result, on 24 April 2012, the Single Judge of the FIFA Player's Status Committee decided the following:

> *"1. The claim of the Claimant, Racing Club, is rejected.*
>
> *2. No costs shall be charged to the Claimant, Racing Club, based on art. 15 par. 1 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber"*.

34. On 26 October 2012, the parties were notified of the decision issued by the Single Judge of the FIFA Player's Status Committee (hereinafter the "Appealed Decision").

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

35. On 16 November 2012, the Appellant filed its statement of appeal with the Court of Arbitration for Sport (hereinafter the "CAS"), pursuant to Article R48 of the Code of Sports-related Arbitration (Edition 2012) (the "Code"), and nominated Mr Hernán Jorge Ferrari, attorney-at-law in Buenos Aires, Argentina as arbitrator.

36. On 12 December 2012 the Respondent requested the time limit to file the answer to be fixed after the payment by the Appellant of its share of the advance of costs, pursuant to Article R55, §3 of the Code. In the same occasion, the Respondent requested the Appellant to provide translations into English of some attachments of the appeal brief, which were ordered by the Panel upon its constitution.

37. On 27 November 2012, the Appellant lodged its appeal brief, pursuant to Article R51 of the Code.

38. On 30 November 2012, the Respondent appointed Mr Hendrik Willem Kesler, attorney-at-law in Enschede, The Netherlands as arbitrator.

39. On 3 December 2012, FIFA confirmed to the CAS Court Office that it renounced its right to request its intervention in the present arbitration proceedings.

40. On 4 April 2013, the CAS Court Office informed the parties that the Panel to hear the case had been constituted as follows: Mr Pedro Tomás Marqués, President of the Panel, Mr Hernán Jorge Ferrari and Mr Hendrik Willem Kesler as arbitrators.

41. On 11 April 2013 and on behalf on the Panel, the CAS Court Office invited the Appellant to provide the translation into English of several exhibits attached to its Appeal Brief. On the same occasion, it advised the Respondent that it would be granted a new time limit to file its

answer upon receipt of the requested translations and that in the meantime, its time limit remained suspended.

42. On 30 April 2013, the Appellant filed the requested translated documents.

43. On 27 May 2013 and in a timely manner, the Respondent filed its Answer, pursuant to Article R55 of the Code.

44. Following a consultation and agreement with the parties, the Panel decided to hold a hearing on 19 June 2013.

45. On 31 May and 4 June 2013, the Appellant and the Respondent respectively sent to the CAS Court Office a duly signed copy of the Order of Procedure, without any remarks.

46. The hearing was held on 19 June 2013 at the CAS premises in Lausanne, Switzerland. The Panel was assisted by Mr Pedro Fida, Counsel to the CAS, and Mr Patrick Grandjean, *ad hoc* Clerk.

47. At the hearing the Appellant was represented by its legal counsels, Mrs Ana Maria Favier, Mr Daniel Mario Crespo and Mr Cristian Germán Ferrero, assisted by Mrs Marisol Crespo, interpreter. The Respondent was represented by its legal counsel, Mr Paolo Lombardi.

48. The Panel heard the testimony of Mr Miguel Rosello, via teleconference, pursuant to Article R44.2 of the Code. Mr Rosello was invited by the President of the Panel to tell the truth subject to the consequences provided by the law. He was then examined and cross-examined by the parties and questioned by the Panel.

49. After hearing the parties' closing arguments, the Panel closed the hearing and announced that its award would be rendered in due course. At the conclusion of the hearing, the parties confirmed that their rights before the Panel had been fully respected, that they had no objections in respect to the composition of the Panel, their right to be heard and to be treated equally in the present proceedings and that they had been given the opportunity to fully present their cases.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant's submissions

50. The Appellant submitted the following requests for relief:

"THE APPELLANT REQUESTS THE CAS:

I. To accept the appeal against the decision adopted by FIFA on 24 April 2012.

II. To annul the decision issued by FIFA on 24 April 2012 and issue a new decision establishing that:

a. [The Respondent] shall pay to [the Appellant] an amount equal to 25% of all the amounts received by [the Respondent] for the transfer of the [Player] to the Spanish club Real Zaragoza, plus the accrued legal interest.

b. The costs related to the present arbitration shall be borne by [the Respondent].

c. [The Respondent] shall pay the legal fees and other expenses incurred by [the Appellant] in connection with the present arbitration procedure".

51. The Appellant's submissions, in essence, may be summarized as follows:

- The appointment of Blanquiceleste was made under Act No 25.284, which provided for a specific regime only applicable to Argentinean clubs with financial difficulties. *"Neither the bankruptcy nor the application of the Law 25,284 nor contract with the company Blanquiceleste had an impact on the relationship or position of [the Appellant] against the general public, members, players, other clubs, AFA or FIFA".*
- Blanquiceleste was only occupying a managerial position and the Appellant remained the owner of all the rights arising from the applicable FIFA and AFA regulations, from the formation of players and/or from their transfer. In this regard and contractually speaking, the Appellant - and not Blanquiceleste – was the Player's employer, even after the appointment of Blanquiceleste.
- The Single Judge of the FIFA Player's Status Committee erroneously evaluated the Transfer Agreement in the Appealed Decision:
  - The contract explicitly specifies that Blanquiceleste was acting as the Appellant's manager, i.e. as its representative.
  - Blanquiceleste and the Appellant were indeed two distinct legal entities. However, this does not change the fact that all the rights related to the Player remained with the club. Blanquiceleste was just the administrator of the club and, as such, was acting on the Appellant's behalf. Under these circumstances, no inference can be made with respect to the fact that the Appellant did not sign the Transfer Agreement.
  - The fact that the Appellant made its payment on Blanquiceleste's bank account is irrelevant as the company received the money on behalf of the club.
- The Appealed Decision would be well founded only if Blanquiceleste entered into the Transfer Agreement in its own name and on its own behalf. In view of the circumstances, drawing such a conclusion is not reasonable and is inconsistent with the following observations:
  - The Appellant's corporate name was very close to Blanquiceleste's (Racing Club v/ Racing Club Blanquiceleste). *"Why be called that way when acting in their own right?".*
  - The Management Agreement explicitly provided that Blanquiceleste was the Appellant's manager and, in this capacity, was entitled to enter into transfer agreements. *"Why would these references if Blanquiceleste act in the role of a party to the transfer*

of the player contract D.?". "Why talk about management and the powers that are in management if it were simply Blanquiceleste rights holder involved?".

- Under section VIII of the Transfer Agreement, it is provided that the Respondent *"confirmed that [Blanquiceleste]; in its capacity as manager of the football related activities of [the Appellant]; possesses extensive powers to carry out the transfer of the PLAYER's federative and economic rights".* This provision establishes that the parties to the Transfer Agreement were aware of the fact that Blanquiceleste was acting on behalf of the Appellant when it signed the Transfer Agreement.
- The purpose of the Transfer Agreement is the transfer of the Player to the Respondent. Such a transfer implies the assignment of the Player's federative rights. Considering that only a club can hold the so-called federative rights, the involvement of the Appellant in the contractual relationship between Blanquiceleste and the Respondent was inevitable. This is even more true as the Player was bound by a labour agreement with the Appellant and not with Blanquiceleste.
- According to article 12 of the Transfer Agreement, the Player's transfer to the Respondent had to be formally approved by the Appellant's legal representative. *"If Blanquiceleste acting in their own right and without representing [the Appellant], why the contract required ratification of the legal representatives of the club* (…)*?".*

- In view of the circumstances of the case, the Respondent has always been aware of the fact that Blanquiceleste was not acting on its own behalf but on the behalf of the Appellant. In this regard, in the previous proceedings before FIFA, the Respondent had not contested the fact that Blanquiceleste lodged a claim on behalf of the Appellant for the payment in its favour of an amount based on articles 4 and 5 of the Transfer Agreement. There is no reason to treat differently a new claim lodged by the Appellant on the basis of the very same agreement. The Appealed Decision is inconsistent with the precedent decision issued by the very same FIFA body on 13 April 2005.

B. The Answer

52. The Respondent filed an answer, with the following requests for relief:

"REQUESTS:

1. *We request that the Appellant's appeal be rejected and the decision rendered by the Single Judge of the FIFA Players' Status Committee confirmed.*
2. *In any case, we request this Honourable Court to order the Appellant to bear all costs incurred with these proceedings.*
3. *In any case, we request this Honourable Court to order the Appellant to cover the Respondent's legal costs related to these proceedings, which amount to approximately CHF 31,500".*

53. The Respondent's submissions, in essence, may be summarized as follows:

- When it signed the Transfer Agreement, Blanquiceleste was acting in its name and on its own behalf. The fact that Blanquiceleste was allegedly signing the Transfer Agreement as a mere representative of the Appellant does not appear anywhere in the contract. The Appellant has failed to establish that it was a party to the contract and that it has rights arising from it.
- *"The fact that [Blanquiceleste] needed confirmation from the Appellant to release the Player, despite being its representative, is an indication that the agreement was structured by the Company as a contract between [the Respondent] and Blanquiceleste, the latter in its position to influence and decide on the transfer of the players registered with Racing Club"*.
- The name of the Appellant is also not mentioned on the statement dated 1 June 2004 and issued by the Respondent at the express request of Blanquiceleste.
- The Transfer Agreement explicitly provides that *"the amount agreed in the Transfer Agreement in favour of Blanquiceleste was* (…) *a commission for the services rendered (by [Blanquiceleste]) in the transfer of the Player.* (…) *It is quite evident that such a commission, because of its very nature, may only be paid to a third party and not to the club holding the Player's federative rights"*.
- Article IX sections 9.1 and 9.2 of the Management Agreement lays down the allocation key for sharing the fees linked to the transfer of a player. According to these provisions, the Appellant has a contractual claim against Blanquiceleste but not against the transferee, i.e. the Respondent.
- *"Moreover, the available evidence produced in the proceedings before FIFA and CAS suggests that the Appellant is in fact not entitled at all to collect the credit regarding the economic rights of the Player"*.
- *"It is further confirmed by the Appellant itself (cf. section 32 of the Appeal Brief) that [Blanquiceleste] was the holder of a percentage of the economic rights of the players registered with [the Appellant] and that the results of these transfer of these players were the main income source for Blanquiceleste"*.
- *"The payment of all compensations to be deposited in the Company's accounts in France and not in the registered accounts of the Appellant in Argentina further indicates Blanquiceleste's intention to collect its service fees from the transfer monies"*.
- The Appellant and Blanquiceleste have always acted as two legal distinct entities, whether in the various agreements they entered into or in the proceedings lodged before FIFA and CAS.
- The Appellant cannot derive any right from the fact that Blanquiceleste was acting on its behalf in the first FIFA proceedings. The second FIFA proceedings were distinct from the first one, as they did not have the same purpose. The two cases must be treated separately and independently.
- Blanquiceleste and the Appellant brought to Argentinean courts numerous claims against each other as regards their contractual relationship. The Appellant's *"entitlement to benefit from the economic rights pursuant to the Management Contract is far from established and is currently being debated"*. In this regard, the proceedings initiated before the Argentinean Courts produce an effect of *lis pendens* on the present arbitration as there is a possible conflict between the two proceedings and there is a risk of contradictory judgments.

V. ADMISSIBILITY

54. Article R49 of the Code provides as follows:

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.

55. The admissibility of the appeal is not challenged. The statement of appeal was filed within the deadline set in Article 67, §1 of the FIFA Statutes (Edition 2012). No further internal recourse against the Appealed Decision is available to the Appellant within the structure of FIFA. Accordingly, the appeal is admissible

VI. JURISDICTION

56. Article R47 of the Code provides as follows:

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.

57. The jurisdiction of CAS, which is not disputed, derives from Articles 62 et seq. of the FIFA Statutes and Article R47 of the Code. It is further confirmed by the order of procedure duly signed by the parties.

58. It follows that the CAS has jurisdiction to decide on the present dispute.

59. Under Article R57 of the Code, the Panel has the full power to review the facts and the law.

VII. APPLICABLE LAW

60. Article R58 of the Code provides as follows:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

61. According to the article 11 of the Transfer Agreement, *"It is expressly agreed by the parties that this agreement shall be governed by FIFA rules […]".*

62. 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"*.

63. 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.

VIII. MERITS

64. The Appellant claims that the Transfer Agreement was signed on its behalf whereas the Respondent argues that Blanquiceleste entered into the contract exclusively in its own name and for its own account.

65. Hence, the issues to be resolved by the Panel are the following:

A. Does the *lis pendens* principle apply in the present proceedings?

B. On whose behalf did Blanquiceleste sign the Transfer Agreement?

C. Who is bound by the Transfer Agreement and what are the consequences?

A. Does the *lis pendens* principle apply in the present proceedings?

66. The Respondent claims that Blanquiceleste and the Appellant brought to Argentinean courts numerous claims against each other as regards their contractual relationship. It contends that the proceedings initiated before the Argentinean Courts produce an effect of *lis pendens* on the present arbitration as there is a possible conflict between the two proceedings and there is a risk of contradictory judgments.

67. According to the Swiss Federal Court, the *lis pendens* principle is indeed applicable when international arbitrators sitting in Switzerland are confronted with state proceedings abroad on the same object between the same parties (ATF 127 III 279, page 285 consid. 2 dd.).

68. The present dispute before the CAS is between the Appellant and the Respondent and not between the Appellant and Blanquiceleste. Hence, there is no identity as to the parties involved in the alleged disputes brought before the Argentinean courts and the parties to the present arbitration. Under these circumstances, the *lis pendens* principle does not apply and the Respondent's argument in this respect must be disregarded without further consideration. However, the Respondent brings no evidence about this circumstance.

B. On whose behalf did Blanquiceleste sign the Transfer Agreement?

a) In general

69. It is undisputed that Blanquiceleste and the Appellant are two distinct legal entities.

70. Consequently, the Panel has to resolve whether Blanquiceleste was acting in its own name and on its own behalf when it signed the Transfer Agreement, or in the Appellant's name and for the Appellant's account (direct representation), or in its own name but on the Appellant's behalf (indirect representation). This issue must be assessed in the light of Article 32 of the Swiss Code of Obligations (hereinafter "CO"), which reads as follows:

"Art. 32

1 The rights and obligations arising from a contract made by an agent in the name of another person accrue to the person represented, and not to the agent.

2 Where the agent did not make himself known as such when making the contract, the rights and obligations arising there from accrue directly to the person represented only if the other party must have inferred the agency relationship from the circumstances or did not care with whom the contract was made.

3 Where this is not the case, the claim must be assigned or the debt assumed in accordance with the principles governing such measures".

71. The direct representation is governed by Article 32 par. 1 and 2 CO and the indirect representation by Article 32 par. 3 CO (Christine Chappuis; Des obligations résultant d'un contrat, in Commentaire Romand, Code des obligations I, Bâle, 2003, ad art. 32, N. 10 et seq. p. 199 et seq.).

72. Direct representation exists where an agent acts in the name and on behalf of the principal. If the agent acts within the scope of his authority, his acts bind the principal and the third party directly, but not himself (Judgement of the Swiss Federal Court 4C.436/1999 of 28 March 2000; consid. 3.b). Hence, two conditions must be met for the principal to be bound by the agent's acts (ATF 126 III 59, consid. 1.a, page 64):

- The concluding agent must be authorised to enter into agreements with third parties on behalf of the principal (Judgement of the Swiss Federal Court 4C.127/2001 of 22 August 2001, consid. 2.a). He must be granted an "authority"; i.e. a power to affect the principal's legal position and to place the principal in the same situation as if he had carried out the act himself. In the absence of any legal provision to the contrary, the authority is not subject to compliance with any particular form (ATF 99 II 39) and may be granted by the principal or by the law. Pursuant to Article 38 par. 1 CO, *"Where a person without authority enters into a contract on behalf of a third party, rights and obligations do not accrue to the latter unless he ratifies the contract".*
- The concluding agent must enter into agreements with third parties on behalf of the principal. This is the case a) when the agent discloses that his intervention is based on an agency relationship or b) when the agent fails to mention his intermediary status but *"the*

other party must have inferred the agency relationship from the circumstances". In both cases, the third party must acknowledge the intention of the agent to act on behalf of the principal (Judgement of the Swiss Federal Court 4C.436/1999 of 28 March 2000; consid. 3.b). There is also direct representation, when the other party *"did not care with whom the contract was made"*; i.e. whether it entered into a contract with the principal or with the agent or when a person causes a third party reasonably and in good faith to believe that he has authorised a representative to perform certain acts. In the latter case, the person is treated as a principal.

73. There is indirect representation when the intermediary acts "in his own name". He is to contract with third parties in a personal capacity. In this situation, the third party neither knows nor has reason to know that the intermediary acts as an agent. As a consequence, the intermediary and the third party are bound to each other; the principal and the third party are not.

b) The relation between Blanquiceleste and the Appellant

74. The Appellant was declared bankrupt before it was subject to a *"Special Regime concerning the Management of Sport entities undergoing Economic Difficulties"*, i.e. Act No 25.284, the purpose of which was to implement the necessary measures and remedies to protect sport as a social right, to ensure the Appellant's survival, the continuation and growth of its activities as well as the settlement of its debts.

75. In order to achieve the expected results, the Appellant, represented by the appointed *"Fiduciary Body created by Act No 25.284"* entered into the Management Agreement with Blanquiceleste, which claimed to be in the position *"to bring about the discharge of the bankruptcy, the restructuring of the Club's economy, and the necessary funds to carry out improvements on the premises and resources to form a competitive professional team and also improve the inferior divisions and take care of the new players which may be discovered on such inferior divisions, as well as promote amateur activities apart from football"*. In order to be effective, the Management Agreement had to be approved by AFA as well as by the authorized judicial authority.

76. Against this background, it is undisputable that the Management Agreement was entered into within the framework of the Appellant's bankruptcy proceedings, governed by Act No 25.284. Blanquiceleste is an integral part of the reorganisation plan approved for the Appellant and, as a result, its freedom to perform the services independently is limited consequently.

77. Under these circumstances, it is not reasonable to conclude that Blanquiceleste was acting in its own name and on its own behalf when performing its contractual duties. This is even more true as:

- Blanquiceleste's activities were subject to the Appellant's periodic review and approval, which was implicitly granted unless the Appellant filed objections to the quarterly report submitted by Blanquiceleste (article 6.1 of the Management Agreement).
- Blanquiceleste's acts of disposal involving the Appellant's assets (among which the transfer of the players' federative and economic rights) had to be authorized by the

competent court. This is confirmed in the particular case of the Player, whose transfer to the Respondent had to be ratified by the competent judicial authorities (as per article 12 of the Transfer Agreement) and required the Appellant's active participation, as it was the Player's formal employer and the holder of the Player's federative rights.

78. Then, the question arises as to what kind of relationship Blanquiceleste and the Appellant entered into. In view of the terms of the Management Agreement, it is evident that Blanquiceleste was not in an employment relationship with the Appellant. As a result, it was not subordinated to the latter or subject to its instructions. This is consistent with the terms of the Management Agreement, according to which Blanquiceleste *"shall be in charge of the operation, administration, trading and management, by its own, freely and autonomously of the football activities of the Club. The Club shall not interfere on these activities, except for the powers of supervision granted herein"* (see article 4.3 of the Management Contract). In addition and considering that *"The parties herein expressly state that this agreement shall not imply the creation of any type of association between them nor a society relationship"* (see article II par. 2 of the Management Agreement), Blanquiceleste must be considered as an agent, i.e. a legally independent commercial intermediary, which undertakes to conduct certain business or provide certain services in accordance with the terms of the contract (Under Swiss law, see Article 394 CO). In this capacity, the agent has a general duty of care and loyalty towards the principal and, in particular, is liable to the principal for the diligent and faithful performance of the business entrusted to him.

c) The relation between Blanquiceleste and the Respondent

79. Based on the foregoing, the Panel has to evaluate whether the Appellant has the right to assert against the Respondent any claim arising out of the Transfer Agreement. It is not disputed that the Appellant did not sign this document. Hence the question to answer is whether the following two requirements of direct representation were met:

- Blanquiceleste was authorised to enter into the Transfer Agreement with the Respondent on behalf of the Appellant;
- Blanquiceleste entered into the Transfer Agreement on behalf of the Appellant. This is the case a) when the agent discloses that his intervention is based on an agency relationship or b) when the agent fails to mention his intermediary status but *"the other party must have inferred the agency relationship from the circumstances"* (Article 32 par. 2 CO). In both cases, the third party must acknowledge the intention of the agent to act on behalf of the principal.

80. The Panel has no difficulty to accept that the first condition is satisfied. As a matter of fact and based on the Management Agreement, Blanquiceleste was *"in charge of the operation, administration, trading and management* (…) *of the football activities of the Club [which include] Any assignment of Player's rights"* (see articles II and III of the Management Agreement). The AFA and the competent judicial authority duly approved this contract.

81. Regarding the second condition, the Panel observes that Blanquiceleste signed the Transfer Agreement as the Appellant's administrator and manager (see articles I and VIII of the preamble

of the Transfer Agreement). Under these circumstances, the Respondent could not ignore that Blanquiceleste was acting on the Appellant's behalf and not in its own interest. This is even more evident that the Respondent's attention was drawn to the fact that Blanquiceleste's powers to act as the Appellant's manager were granted *"Pursuant to a Disposition laid down by Enrique Gerostegui Esq., current judge at the Civil and Commercial Court No 16 of the Judicial Department of La Plata City, Argentina"* (see article I of the preamble of the Transfer Agreement) and that the Appellant was placed under the regime governed by Act No 25.284 (see article 12 of the Transfer Agreement).

82. Moreover, a manager is by definition an intermediary, who arranges transactions between the principal and third parties and/or who is granted the authority to conduct other business operations on behalf of the principal. The Respondent even *"confirmed that [Blanquiceleste] in its capacity as manager of the football related activities of [the Appellant] possesses extensive powers to carry out the transfer of the PLAYER's federative and economic rights"* (see article VIII of the preamble of the Transfer Agreement). Not only did the Respondent acknowledge the fact that Blanquiceleste was acting in *"its capacity as manager"* but it also explicitly accepted that the latter *"possesses extensive powers"* to transfer the Player, i.e. that Blanquiceleste was acting within the scope of an authority enabling it to enter into the Transfer Agreement.

83. In this regard, the Panel observes that, during the hearing held before the CAS on 19 June 2013, the Respondent accepted explicitly that Blanquiceleste was acting on behalf of the Appellant during the first FIFA proceedings related to the claim based on articles 4 and 5 of the Transfer Agreement.

84. However and in an ambiguous manner, the Transfer Agreement states that *"[The Player]* (…) *is currently under a professional football player agreement with [Blanquiceleste]"* and that Blanquiceleste *"declares it is the exclusive owner of the federative and economic rights of the player"* (see articles IV and V of the preamble of the Transfer Agreement). These statements are inconsistent with the following facts:

- The Player's labour agreement was signed with the Appellant only and took effect several months after the entry into force of the Management Agreement. In other words, the parties to the Management Agreement accepted that the employment relationship was to be established between the Appellant and the Player and not between Blanquiceleste and the Player.
- The Transfer Agreement also explicitly provides that the regime applicable to the Appellant conferred Blanquiceleste *"the capacity to execute agreements for loan or acquisition; of any type and title, of players' federative and economic rights"* (see articles II and VIII of the preamble of the Transfer Agreement), it being understood that the Appellant remained the *"holder of the federative rights of any of its players in compliance with binding rules of FIFA"* (see article III of the preamble of the Transfer Agreement).
- The Respondent is one of the most renowned clubs of Italy with a long history of successes. As such, it was obviously aware of the fact that the transfer of the Player implies the assignment of the Player's federative rights, which relate to the registration of the Player to a club. Hence, only a club can be the holder of the Player's federative rights and

can assign them to a third party. As a result, any party desiring to obtain the Player's federative rights can only acquire them via a club, i.e. via the Appellant and not Blanquiceleste.

- The fact that Blanquiceleste was the *"exclusive owner of the federative and economic rights of the player"* runs in direct contradiction to the fact that the Transfer Agreement needed to be ratified by the competent body appointed in accordance with Act No 25.284.

d) Conclusion

85. Based on the above observations, the Panel holds that the requirements of direct representation were met. Blanquiceleste was authorised to act on behalf of the Appellant and it signed the Transfer Agreement with the Respondent in its capacity as the Appellant's manager and administrator, which was clearly disclosed to the Respondent. The latter could not ignore that only a club and not a private company can transfer the Player's federative rights and the proportion of economic rights it eventually holds and it *"must have inferred the agency relationship from the circumstances"* (see article 32 par. 2 CO).

86. The Panel takes comfort in its position by the fact that the claims arising from the Transfer Agreement and related to the Player, cannot be found among the assets of Blanquiceleste's bankruptcy estate. This suggests that the Transfer Agreement was indeed signed on behalf of the Appellant.

87. The fact that the transfer fees were paid on Blanquiceleste's bank account or that the Respondent issued on 1 June 2004 a (unilateral) written statement, whereby it committed itself to pay to Blanquiceleste 25% of the amounts received following the Player's transfer to another club, is consistent with a) the fact that Blanquiceleste was acting as an intermediary, on behalf of the Appellant and b) with Blanquiceleste's broad powers of representation, the existence of which were disclosed to the Respondent.

C. Who is bound by the Transfer Agreement and what are the consequences?

88. It has been established that Blanquiceleste was acting in the name and on behalf of the Appellant when it entered into the Transfer Agreement. As a consequence, the rights and obligations arising there from accrue directly to the Appellant (see Article 32 par. 1 and 2 of the CO).

89. In its appeal lodged before the CAS, the Appellant requires the Panel to order the Respondent to pay in its favour *"an amount equal to 25 % of all the amounts received by [the Respondent] for the transfer of the [Player] to the Spanish club Real Zaragoza, plus the accrued legal interest"*. The Appellant did not put an exact figure on the amount of its claim.

90. In the present case, it is undisputed that on 19 June 2007, the Respondent received EUR 5,000,000 for the final transfer of the Player to Zaragoza and that, on the basis of article 7 (c) of the Transfer Agreement, the Respondent must pay to its contracting partner 25 % of such amount, which equals EUR 1,250,000.

91. According to the Order of Procedure duly signed by the parties to the present proceedings, the sum in dispute is EUR 1,250,000. The Panel does therefore not need to address whether the above 25% should also apply to other amounts received by the Respondent, namely to the EUR 2,000,000 paid by Zaragoza for the loan of the Player. In this regard, it can also be observed that the claim filed by the Appellant before FIFA was also limited to the payment of EUR 1,250,000.

92. For all the reasons already exposed, the sum of EUR 1,250,000 must be paid to the Appellant. The Panel leaves open the question whether the liquidator(s) of Blanquiceleste may apply to the competent judicial Argentinean authorities for the payment of a portion of such sum from the Appellant, according to Article IX – Benefits and Funds for the Club - of the Management Agreement.

93. The Appellant alleges that it is entitled to the payment of interest.

94. In the absence of a specific contractual clause related to the late payment of the debt arising out of article 7 (c) of the Transfer Agreement, the Panel can only apply the legal interest due pursuant to Article 104 of the CO. 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 by agreement, a notice is not necessary (see Article 102 of the CO; THÉVENOZ L.; in THÉVENOZ/WERRO (eds.), Commentaire romand, Code des obligations I, 2ème edition, 2012, ad art. 102 CO, N. 26, p. 806).

95. Regarding the *dies a quo* for the interest, the Transfer Agreement provided that the Respondent was to perform its contractual obligation *"simultaneously with the payments received by [the Respondent] from the new club to which the PLAYER will be assigned"*.

96. As a consequence, the interest of 5% shall be calculated as of 19 June 2007, which corresponds to the day when the Respondent received EUR 5,000,000 from Zaragoza.

97. This conclusion makes it unnecessary for the Panel to consider the other requests submitted by the parties. Accordingly, all other prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Racing Club Asociación Civil against the decision issued by the Single Judge of the FIFA Players' Status Committee on 24 April 2012 is upheld.

2. The decision issued by the Single Judge of the FIFA Players' Status Committee on 24 April 2012 is set aside.

3. Genoa Cricket and Football Club S.p.A. is ordered to pay to Racing Club Asociación Civil EUR 1,250,000 plus interest of 5% p.a. starting on 19 June 2007 until the effective date of payment.

4. (…)

5. (…)

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