



The

**FIVB TRIBUNAL**

**Mr. Piotr Stolarski, Single Judge**

herewith issues the following

**DECISION**

on the Request for Review – RfR 2015-01 - CC032/2014

filed by

**FOINIKAS SC SYROS ISLAND (the “Club”)**

84 100 Finikas, Syros Island, Greece

Represented by Mr Alkis Papantoniou, Attorney-at-Law in Greece

vs.

**THOMAS ZASS (the “Player”)**

..... (respondent’s address)

## **1. The Parties**

1. Foinikas SC Syros Island is a professional volleyball Club in Syros Island, Greece.
2. Mr Thomas Zass is a professional volleyball player from Austria.

## **2. The FIVB Tribunal Judge**

3. Article 1.5 of the FIVB Tribunal Regulations (“Regulations”) provides as follows:

*“1.5 Cases before the FIVB Tribunal shall be heard by all five (5) members, unless one or more of the members is unavailable or ineligible due to reasons of conflict (see Article 9) and, thus, replaced by a substitute judge from the same Confederation. However, in the event that a case only involves parties from the same Confederation, that case shall be heard by the judge from that Confederation as a single judge unless a hearing by the full FIVB Tribunal is requested by one of the parties. If that member has the same nationality as one of the parties, he/she shall be replaced by the substitute member from the same Confederation. If both the member and the substitute member from the Confederation in question have the nationality of one of the parties, the FIVB President shall appoint ad-hoc a neutral judge from the same Confederation provided that he/she possesses the qualifications set out in Article 1.3 above”.*

4. Because both parties come from Europe and none of the parties requested a hearing by the full FIVB Tribunal, this Request for Review will be heard by a judge of the FIVB Tribunal from Europe, acting as a single judge.
5. Mr. Erhard Rubert, the regular member of the FIVB Tribunal from Europe, was unavailable to judge on this case. He was replaced by the substitute member, Mr. Piotr Stolarski (hereinafter the “Judge”). The Single Judge does not have the same nationality as any of the parties, and the parties did not challenge his appointment.

## **3. Facts and Proceedings**

### **3.1 Background Facts**

6. It is indisputable that on 30 September 2013, the Player and the Club signed a contract according to which the Player was obliged to play in the Club in the season 2013-2014, and the Club was obliged to pay the Player total compensation in the amount of 36,478.08 EURO, paid in 9 monthly instalments, 4,053.12 EURO each and the salary paid in the period of 8 months in the sum of 127.74 EURO. The total of the contract equalled 37,500.00 EURO. The contract was

signed for the period of time from 1 October 2013 to 31 May 2014.

7. In the period of time covered by the contract, the Club paid the Player in monthly instalments the following sums:

- 2.10.2013: 4200 EURO
- 31.10.2013: 4150 EURO
- 5.12.2013: 4150 EURO
- 14.01.2014: 4150 EURO
- 14.02.2014: 4150 EURO
- 3.04.2014: 4150 EURO
- Total: 24950 EURO

8. In addition to the above amounts, which is confirmed by the Player, there was a money transfer on 8 May 2014 for the sum of 4100 EURO.

9. Thus, it is indisputable that in the period of time covered by the contract, the Club paid the Player altogether the sum of 29050 EURO.

10. After the contract termination the Player claimed the rest of the sum of money, i.e. 8450 EURO to be paid by the Club. Due to the Club's refusal, he filed a complaint against it with the CEV. The CEV Mediation Chamber's Decision CC032/2014 of 13 January 2015 obliged the Club to pay 8450 EURO to the Player as the outstanding salary, and the sum of 400 EURO to reimburse the legal costs of the proceedings.

### **3.2 The Proceedings before the FIVB Tribunal and the Parties' Submissions**

11. On 29 January 2015, the Club appealed against the decision before the FIVB Tribunal.

12. In its submission with accompanying exhibits, the Club stated that on 12 December 2013 the sum of 8000 EURO had been transferred to the Player's account, so there remained only the

sum of 450 EURO to be paid to the Player, which the Club did not question.

13. On 3 February 2015, the FIVB Tribunal Secretariat acknowledged receipt of the Club's Request for Review and invited the Player to file an Answer by no later than 24 February 2015.
14. On 16 February 2015, the Player sent his submission with accompanying exhibits.
15. Responding to the Club's appeal, the Player explained that the transfer of 8000 EURO made on 12.12.2013 was not the payment deriving from the contract but it was the transfer of his own money. The Player explained that as he did not possess a bank account in a Greek bank, according to the Club's suggestion, he paid into the Club's account the sum of 8000 EURO, which was transferred by the Club to his account in an Austrian bank. To confirm these circumstances, the Player pointed also to the other transfer of 20 February 2014, in which the Club transferred to the Player's account in the Austrian bank the sum of 6000 EURO, which was never reported by the Club during the settlement with the Player.
16. On 19 February 2015, the FIVB Tribunal Secretariat acknowledged receipt of the Player's reply and informed both the Player and the Club that no further submission would be accepted unless otherwise prompted by the FIVB Tribunal.

#### **4. Jurisdiction**

17. In its decision, the CEV found that it had competence to decide the dispute based on Article 45.11.1(b) of the FIVB Sports Regulations, which states the following:

*"After receiving a written complaint ("Complaint") and providing the respondent with an opportunity to submit its reply in writing ("Reply"), the FIVB can decide a financial dispute of an international dimension between a club, a player or a coach..." (emphasis added).*

18. The Club's objection against the competence of the CEV and the FIVB Tribunal concerning cannot succeed: the Club did not mention this objection when the matter was being dealt with by the CEV, and the current proceedings are only the appeal procedure concerning the CEV's Decision of 13 January 2015. Moreover, the procedure accepted is in accordance with the Sports Regulations of FIVB, especially art.45.11.1d, and with art. 2 FIVB Tribunal Regulations as explained in the following paragraphs.

19. The CEV correctly determined that this is a financial dispute of an international dimension between a player and a club from different national federations (Austria and Greece respectively). Consequently, the requirements of Article 45.11.1(b) of the FIVB Sports Regulations are met.
20. In challenging the FIVB's competence, the Club does not discuss Article 45.11.1(b) but rather argues that the Contract provides that the parties would resolve their disputes before the Athletic Justice bodies in Greece. The relevant provision of the Contract is provided as follows:

*“Both parts [sic] accepts and appoint exclusively competent for the solution of any differences that may appear between them in the future, the Athletic Justice bodies as they are defined in article 95 of the Law in force 2725/99, accepting the abovementioned procedure and all articles of the Regulation of Relations between Payable Volleyball Players and Departments of Volley Payable Athletes, waiving from now on and with this, the inclusion of any dispute among the parties in the civil courts.”*

21. The Club then provides the relevant legal framework of Article 95 of Greek Law 2725/99 and argues that this framework in conjunction with the arbitration agreement in the Contract leads to the conclusion that the Financial Dispute Resolution Chamber of the Hellenic Volleyball League is competent in the first instance and the Financial Dispute Resolution Chamber of the Hellenic Volleyball Federation is competent at the second instance to the exclusion of the CEV. However, the Club's argument must fail based on the following.
22. The FIVB Sports Regulations govern all international transfers in volleyball. Specifically, Article 45.1.3 of the FIVB Sports Regulations states the following:

*“Players and clubs must abide by the rules of their NFs for national transfers and by the FIVB Regulations for all international transfers.”*

23. Likewise, Article 45.1.4 of the FIVB Sports Regulations states the following:

*“These Regulations [the FIVB Sports Regulations] apply to all international transfers of players who are either licensed by or members of an NF affiliated to the FIVB.”*

24. Thus, the framework created by the FIVB is that the NFs control transfers domestically while the FIVB Sports Regulations govern transfers internationally. The FIVB then chose to provide a mechanism to allow players, clubs, and coaches file financial complaints with the FIVB, or the relevant confederation (such as the CEV in this case), that were international in nature. As

correctly ruled by the CEV, because the present dispute is of an international dimension, involving an Austrian player and a Greek club, the present dispute would fall within this framework.

25. However, the arbitration agreement in the present dispute is not made irrelevant by the FIVB Sports Regulations. The FIVB allows parties to create their own arbitration agreements in the individual contracts. The effect of the arbitration agreement is that it creates an alternative to the FIVB or CEV, rather than an exclusion, because international transfers are still subject to the FIVB Sports Regulations. Thus, in the present case, the Player had a choice of forum to file his dispute: before the CEV or before the Financial Dispute Resolution Chamber of the Hellenic Volleyball League. He chose the former. Since both choices would have been valid, the CEV was correct in determining that it had competence over the present dispute.
26. Finally, the Club argues that the FIVB Regulations support the Club's contention that the CEV and the FIVB do not have competence to decide the present dispute. In support of its assertion, the Club quotes Article 45.11.1(d) of the FIVB Sports Regulations and Article 13.1 of the FIVB Tribunal Regulations. Article 45.11.1(d) of the FIVB Sports Regulations states the following:

*"[...] The decision will be taken on the balance of probabilities and by applying general principles of justice and fairness without reference to any particular national or international law (ex aequo et bono)."*

27. Article 13.1 of the FIVB Tribunal Regulations provides the following:

*"Unless otherwise agreed by the parties, the Tribunal shall apply general considerations of justice and fairness without reference to any particular national or international law (ex aequo et bono)."*

28. The Club argues that the *"right of the parties to mutually choose and agree to a specific jurisdiction is a general principle of justice and shall be respected by any deciding body and/or authority (see para. 26 of the Club's Appeal Brief)."* This decision on competence does not infringe on the parties right to mutually choose a forum. That forum was available to the Player if he chose to use it. However, the FIVB separately provided, as part of its regulations related to international transfers, an alternative option, filing a claim before the CEV and the FIVB, which the Player chose. When provided with multiple options, general legal principles dictate that the tribunal should respect the choice of the party that made the selection of the

forum. In this case, the Player chose to file his claim with the CEV and, thus, that decision must be respected. For the sake of completeness, the Single Judge would like to explain that the “*unless otherwise agreed to by the parties*” language in Article 13.1 of the FIVB Tribunal Regulations applies to the choice of law provisions of an arbitration agreement, not the choice of forum. Consequently, the Single Judge finds that he has jurisdiction over the present claim.

## 5. Discussion and Findings

### 6.1 Applicable Law

29. Under the heading “Law Applicable to the Merits”, Article 13 of the Regulations reads as follows:

*“Unless otherwise agreed by the parties, the Tribunal shall apply general considerations of justice and fairness without reference to any particular national or international law (ex aequo et bono).”*

30. Neither of the parties has suggested that there was an agreement as to the law applicable to the merits in the present dispute nor have they based their arguments on any national law. In light of the above, the Single Judge will decide the issues submitted to him in this proceeding *ex aequo et bono*.

31. In substance, it is generally considered that an arbitrator deciding *ex aequo et bono* receives “*a mandate to give a decision based exclusively on equity, without regard to legal rules. Instead of applying general and abstract rules, he/she must stick to the circumstances of the case*”.<sup>1</sup>

32. In light of the foregoing matters, the Single Judge makes the following findings.

### 6.2 Findings

33. Having analysed the documentation, the Tribunal supports the Player’s version of events.

34. As the evidence submitted shows, the Club accepted the payment method of the sums defined by the contract, in cash accompanied by the receipt paid directly to the Player. The receipts, 6 of them altogether, paid according to the monthly instalments defined by the contract,

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<sup>1</sup> POUURET/BESSON, Comparative Law of International Arbitration, London 2007, No. 717, pp. 625-626.

confirm that.

35. It is thus indisputable that on December 2013 the Player possessed more than 8000 EURO in cash. Due to the lack of an account in a Greek bank, the regulations limiting money transport between countries, and a fear of travelling with a substantial sum of money, the Player decided to accept the Club's suggestion of money transfer via the Club's account into his account in the Austrian bank.
36. It is confirmed by the fact that the sum of 8000 EURO transferred by the Club on 12 December 2013 does not correspond in any way to the content of the contract between the two parties. On that day, the Club did not owe the Player such a sum of money and the transfer does not contain any note saying that it refers to the salary for the period of time deriving from the contract or to e.g. an advance payment. Moreover, the credibility of the Player's explanations is strengthened by the occurrence of the other money transfer made by the Club into the Player's account in the Austrian bank on 20 February 2014 in the sum of 6000 EURO.
37. If we accepted the Club's explanations that the parties used two alternative payment methods, in cash and by transfer to a given bank account, first of all, the Club would have to show this transfer as the proof of the salary paid to the Player, and the proof of alternative payment methods. Moreover, that would mean a substantial overpayment - about 5,500 EURO, over the sum of money defined by the contract, which cannot be justified either in the content of the contract or in the settlement circumstances taking place between the Club and the Player.
38. The Club's stand is not confirmed either by the transfer made on 8 May 2014, as it was made at the end of the contract period and clearly defined by the Player as the salary instalment due, and its sum of 4100 EURO corresponds to the monthly instalment that should be paid by the Club to the Player.

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## DECISION

For the reasons set forth above, the Single Judge decides as follows:

1. **The Request for Review filed by the Club Foinikas SC Syros Island is dismissed in its entirety.**
2. **The Decision rendered by the CEV Mediation Chamber, CC032/2014 dated of 13 January 2015, is upheld in its entirety.**
3. **Each party shall bear its own costs.**
4. **Any other or further-reaching requests for relief are dismissed.**

Lausanne, legal seat of the proceedings, 14 April 2015.

Piotr Stolarski

Single Judge