

US No. 763, Chelsea Football Club Limited v. Adrian Mutu, United States District Court, Southern District of Florida, 10-24028-CIV-MORENO, 13 February 2012

The court confirmed a Court of Arbitration for Sport award, rejecting respondent's assertion that compensation for the unamortized portions of an acquisition fee, a signing bonus and an agent's fee included in the award were penal and therefore in violation of US public policy, precluding enforcement of the award. The court ruled that these costs were reasonably related to the actual damage caused by respondent's breach of contract and therefore their inclusion in the final award could not serve as a ground for refusal of enforcement under Art. V(2)(b) of the 1958 New York Convention. The court further ruled that the award had been independently and properly decided under English law, which applied to the arbitration.

UNITED STATES NO. 763

763. United States District Court, Southern District of Florida, Miami Division, 13 February 2012, Case Number: 10-24028-CIV-MORENO

Parties: Petitioner: Chelsea Football Club Limited (nationality not indicated)

Respondent: Adrian Mutu (nationality not indicated)

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Articles: V(2)(b)

Subject – public policy and contractual penalty matter:

Topics: ¶ 524 (contractual penalty)

Summary

In August 2003, the soccer player Adrian Mutu (Mutu) transferred from the Italian football Club AC Parma to Chelsea Football Club (Chelsea). He signed a five-year contract under which he would be paid UK£ 2.35 million annually and receive incrementally a UK£ 3300,000 signing bonus; his agent would receive € 500,000 incrementally. Chelsea also paid a UK£ 22.5 million transfer fee to the football club AC Parma for Mutu.

Author

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Jurisdiction

United States

Court

United States District Court, Southern District of Florida

Case date

13 February 2012

Case number

10-24028-CIV-MORENO

Parties

Claimant, Chelsea Football Club Limited
Respondent, Adrian Mutu

Key words

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Applicable legislation

New York Convention

Commentary Cases

¶524

Authoritative Publication Source

In October 2004, Mutu tested positive for cocaine and the Fédération Internationale de Football (FIFA) temporarily banned him from play worldwide. [page "373"](#) Chelsea terminated Mutu's contract. Mutu appealed the termination with the Board of Directors of the Premier League, who assigned the case to its Appeals Committee. In April 2005, the Appeals Committee ruled that Mutu had breached his contract without just cause. Mutu appealed to the Court of Arbitration for Sport (CAS). CAS dismissed the appeal.

In May 2006, Chelsea applied to FIFA for an award of compensation. The Dispute Resolution Chamber of FIFA (DRC) ruled that it did not have jurisdiction. Chelsea then appealed to CAS to annul the FIFA decision. In May 2007, CAS upheld the appeal and referred the matter back to the DRC. In May 2008, the DRC awarded Chelsea € 17,173,990 – the amount of the unamortized portions of the transfer fee, signing bonus and agent's fee – plus 5 percent interest per year.

Mutu appealed to CAS to set aside the DRC award on the grounds that English law, which controlled, had not been properly applied. CAS dismissed the appeal and Mutu requested the Swiss Federal Supreme Court to vacate the award. The Court refused and lifted a stay of enforcement of the award.

Chelsea then sought recognition and enforcement of the CAS award in the United States. Mutu claimed that because the award relies on a contractual penalty clause enforcement would be contrary to public policy.

The United States District Court for the Southern District of Florida, Miami Division, per Federico A. Moreno, US DJ, confirmed the award. The court found that the amount of the CAS award was reasonably related to the damage caused by Mutu's breach of contract and therefore did not violate public policy within the meaning of Art. V(2)(b) of the 1958 New York Convention. The court also found that the CAS award had been "independently and properly decided" pursuant to English law, the applicable law under the contract.

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Excerpt

[1] "Chelsea Football Club Limited petitioned this Court to recognize and enforce the arbitral award rendered by the Court of Arbitration for Sport seated in Switzerland. Chelsea seeks € 17,173,990 plus interest that the Arbitral Tribunal awarded. Respondent Adrian Mutu argues that enforcement of this award is contrary to public policy because it relies on a contractual penalty clause. Respondent has failed to show that enforcement would violate the most basic notions of morality and justice."

I. Standard of Review

[2] "The New York Convention empowers a federal district court to recognize and enforce an action falling under the Convention. See 9 U.S.C. Sect. 203. Chapter 2 of the Federal Arbitration Act incorporates into federal law the New York Convention in order to 'encourage the recognition and enforcement of commercial arbitration agreements in international contracts and to unify the standards by which agreements to arbitrate are observed and arbitral

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Source

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awards are enforced'. *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 520 n. 15, 94 S.Ct. 2449, 41 L.Ed.2d 270 (1974).⁽¹⁾ Where an arbitral award exists, it is to be confirmed unless a respondent can successfully assert one of seven defenses against enforcement. See *Imperial Ethiopian Gov't v. Baruch-Foster Corp.*, 535 F.2d 334, 335-336 (5th. Cir. 1976).⁽²⁾ The defense relevant to this matter states that 'recognition or enforcement of the award would be contrary to the public policy' of the United States. New York Convention, Art. V(2)(b).

[3] "When reviewing an arbitration award, '[c]onfirmation under the Convention is a summary proceeding in nature, which is not intended to involve complex factual determinations, other than a determination of the limited statutory conditions for confirmations or grounds for refusal to confirm'. *Zeiler v. Deitsch*, 500 F.3d 157, 169 (2d Cir. 2007)."⁽³⁾

II. Discussion

[4] "In this case it is uncontested that the award includes the unamortized portions of the acquisition fee, the signing bonus and the agent's fee. Though cast as penal by Mutu, the unamortized costs are reasonably related to the actual damages caused by Mutu's breach of contract. In a case cited by Mutu, it is stated 'the amount of stipulated damages must be reasonably related to the actual damages caused by a breach; otherwise, the clause becomes a penalty for a breach, and, thus, is void as against public policy'. *Int'l Ins. Co. v. Johns*, 874 F.2d 1447, 1457 (11th Cir. 1989); see also *Kothe v. R. C. Taylor Trust*, 280 U.S. 224, 226, 50 S.Ct. 142, 74 L.Ed. 382 (1930). Here, the Court of Arbitration for Sport reasonably relates the arbitral award to the actual damages, providing its rationale that 'a club that paid a substantial fee to former club to secure the services of a player may suffer severe financial consequences if that player unilaterally breaches his contract'.

[5] "The inclusion of actual costs in calculating damages for an arbitral award does not 'so offend public policy' that it should be set aside since '[a]n arbitrator's result may be wrong; it may appear unsupported; it may appear poorly reasoned; it may appear foolish. Yet, it may not be subject to court interference.' *Delta Air Lines v. Air Line Pilots Ass'n, Intern.*, 861 F.2d 665, 670 (11th Cir. 1988). There is nothing so unjust about an award drawn from actual damages that 'enforcement would violate ... basic notions of morality and justice'. *Parsons & Whittemore Overseas Co. v. Societe Generale De L'Industrie Du Papier (RAKTA)*, 508 F.2d 969, 974 (2d Cir. 1974).⁽⁴⁾ Mutu's argument focuses on proportionality of the transfer fee Chelsea paid without addressing that fee's reasonable relation to actual damages suffered by Chelsea. The vast difference between the transfer fee paid to AC Parma and the salary or bonus paid Mutu does not represent a penalty when those figures are used to establish actual damages. The Court of Arbitration's award calculation is related to damages caused by Mutu's breach of contract. This does not violate public policy.

[6] "Mutu's challenge to recognition of the arbitral award fails on another front. Mutu argues the arbitral award is based on a penalty clause within the Art. 22 of the FIFA regulations and such a clause is unenforceable. The award was simultaneously formed under English law pursuant to the choice-of-law provision in the contract

between Mutu and Chelsea. Mutu provides no argument against the award's determination under English law. The Court of Arbitration for Sport states 'that the determination of the amount of compensation that a player breaching an employment has to pay can be based on the unamortised acquisition costs, and that such operation is fully consistent ... with English law'. Even if this Court were to find Art. 22 to be a penalty clause, it is uncontested that the arbitration award was independently and properly decided pursuant to English law."

III. Conclusion

[7] "The award was determined by an arbitrator. The Court of Arbitration for Sport's rationale and award do not violate the public policy of this jurisdiction. Therefore it is adjudged that the arbitration award is confirmed."

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- ¹ Reported in Yearbook I (1976) pp. 203-204 (US no. 4).
 - ² Reported in Yearbook II (1977) p. 252 (US no. 10).
 - ³ Reported in Yearbook XXXIII (2008) pp. 839-855 (US no. 613).
 - ⁴ Reported in Yearbook I (1976) p. 205 (US no. 7).

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