

Sports Litigation Alert

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Court Reluctantly Extends Stay of Arbitration in Legal Dispute

A federal judge from the Northern District of Illinois has granted a motion to extend a stay of arbitration in a case where a soccer match promoter has sued the United States Soccer Federation, Inc. and Major League Soccer in a dispute about whether the USSF is entitled to sanctioning fees, and other issues, in regard to an international exhibition set to be played on U.S. soil.

The judge reasoned that it wanted the Federation Internationale de Football Association, the arbitrator in the dispute, to consider which issues it would address, before taking its own turn in the legal dispute.

On November 8, 2007, Championsworld LLC filed a Claim for Arbitration against the aforementioned defendants. Its petition raised the following claims: (1) vertical conspiracy between the two defendants to restrain competition through the use of USSF's unreasonable, arbitrary and discriminatory sanctioning fee terms; (2) conspiracy by the two defendants to monopolize the market for sponsorship of soccer matches by using predatory sanctioning fees against Plaintiff; (3) racketeering activities by the defendants operating as an association-in-fact enterprise to carry out an extortionate and fraudulent scheme against competition through use of sanctioning fees; (4) fraudulent inducement that USSF had exclusive and required authority to sanction matches; (5) unjust enrichment; (6) restitution due to USSF having no legal right to sanction matches; (7) restitution due to unconscionability of its contracts with USSF based on Plaintiff's lack of bargaining power to resist the imposition of exorbitant and discriminatory sanctioning fees and bonds; and (8) restitution based on enforceability due to doctrine of duress.

A month later, FIFA's Director of the Legal Division and its Deputy Head of Players' Status issued a letter stating that "our organization is not in a position to intervene in the present matter," because the entity's rules provided that only individuals could be parties before the decision-making committees of FIFA. The plaintiff subsequently made repeated requests for a formalized decision from FIFA. In response, on August 13, 2008, FIFA wrote to the plaintiff, reiterating its position that the plaintiff "cannot constitute a party before our deciding bodies." It also stated for the first time that Plaintiff's RICO and antitrust claims were not within the categories of disputes that its regulations allowed its deciding bodies to hear.

With this latest letter in hand, ChampionsWorld filed a motion in federal court to lift the stay. The defendants objected, countering that they had not been apprised of the plaintiff's application and therefore had not had an opportunity to press their case for arbitration

before FIFA. The Court granted the defendants 60 days to see if they could change FIFA's mind. On September 4, 2008, the defendant sought to institute arbitration before FIFA, naming Championsworld CEO Charles Stillitano, rather than ChampionsWorld, as the respondent. The USSF raised claims that did not facially implicate either RICO or the antitrust laws.

Specifically, its petition asked FIFA to decide whether the USSF had the authority to require that matches between foreign national teams first be sanctioned by USSF; asking the following questions:

Does USSF have authority to impose sanctioning fees and require the posting of a bond to secure the fees?;

Does USSF have to return the sanctioning fees previously paid to USSF?; and

Does USSF have the right to notify FIFA if a match agent refuses to pay the sanctioning fees or post the bond?

On October 16, 2008, the defendants sought an additional 60 days to obtain an official determination whether FIFA will accept jurisdiction to hear the case. The plaintiff objected, claiming that it has a right to sue in U.S. Court because otherwise it would be required to forfeit its first-filed, non-arbitrable claims.

Shortly thereafter, FIFA telefaxed a letter to the USSF advising that it would submit the matter to the FIFA Players' Status Committee on November 27, 2008 to determine jurisdiction.

In its discussion of the matter, the court wrote that “the initial decision to compel arbitration was made as a result of a fairly clear provision in the Match Agent License application. There, Stillitano agreed to be bound by the Match Agent Regulation that provided quite clearly that the matters in issue should be arbitrable. While the Court was unaware that the FIFA rules governing arbitration limited applicability to individuals, this fact would not necessarily excuse Stillitano from being personally obligated to arbitrate, because he was the signatory to the license application and was the license holder. He certainly can arbitrate on his own behalf as well as on behalf of his corporation. Where a principal is bound under the terms of a valid arbitration clause, its agents are also covered under the terms of such agreements. *Pritzker v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 7 F.3d. 1110, 1121-22 (3rd Cir., 1993). While the Court notes that Plaintiff is being represented by its creditors, the Court does not believe that the creditors could not also be bound by the agreement to arbitrate.

“Concerning which issues will be decided in arbitration and which will not, it is apparent from the correspondence from FIFA that it will not entertain the antitrust and RICO issues. The question is whether the Court should continue the stay or allow the plaintiff to proceed to litigate the non-arbitrable issues now before this Court. However, FIFA has not stated what, if any, issues it will consider. On any issue FIFA decides to arbitrate, the

stay is mandatory. *Merit Ins. Co. v. Leatherby Ins. Co.*, 581 F.2d 137, 142 (7th Cir., 1978). However, whether to stay the remaining non-arbitrable issues is considered to be within the discretion of the trial court even though this may lead to piecemeal litigation. *Pryner v. Tractor Supply Co.*, 109 F.3d 354, 361 (7th Cir., 1997). However, an exception to discretion to hear non-arbitrable issues while arbitration is proceeding, is where there is a risk of inconsistent rulings and where the pending arbitration is likely to resolve issues material to the non-arbitrated issues. *Volkswagen Of America, Inc. v. Sud's Of Peoria, Inc.*, 474 F.3d 966 (7th Cir., 2007).

“Applying these principles to the case before the Court, it is apparent that the stay ought to be continued to determine what if any issues FIFA will agree to decide. The basic issue that may well be decided by FIFA is whether USSF has the authority to sanction soccer matches and, as a corollary, whether it has the authority to charge sanctioning fees and require posting of bonds. It is the plaintiff's contention that it has no such authority because the statutory authority and mandate of the Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C. §§ 220501, et seq., upon which USSF relies, grants the USSF only the right to exercise jurisdiction over international amateur athletic activities and not professional. Whether the USSF has exceeded its mandate is an issue intertwined through all of the plaintiff's seven claims. Should FIFA hold one way and the Court the other could lead to inconsistent decisions. Granted, whether FIFA holds that USSF has sanctioning authority does not decide the issue whether USSF has exercised its authority in conformance with RICO and antitrust law, but for all other claims and, certainly, as a measure of damages, a decision as to the USSF's authority to impose fees and a bond will be necessary.”

Championsworld LLC v. U. S. Soccer Federation, Inc. et al.; N.D. Ill.; Case No. 06 C 5724, 2008 U.S. Dist. LEXIS 90661; 11/7/08

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