GARRIGUES
Newsletter

Sports & Entertainment

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Index

I. Articles

1. *Playing rules and additional provision 2 bis of the Insolvency Law*

Summary: two court decisions on the application of additional provision 2 bis, concerning Hércules C.F. and Orihuela, with different outcomes; one, by Alicante Commercial Court and the other, by Panel 8 of the Provincial Appellate Court

Author: Mariano J. Castro Jiménez

As readers may already know, the reform to the Insolvency Law made by Law 38/2011, of October 10, 2011, which came into force on January 1, 2012, introduced this additional provision telling us that in insolvency proceedings on sports entities the specific provisions in the sports legislation apply and the fact of the club being in an insolvency proceeding does not prevent the legislation on participation in competitions from applying in full, although implementing provisions had to be drawn up on "sports insolvency proceedings."

And now, this additional provision, which gave rise to some of the oddest situations, such as the petition filed and immediate insolvency order on Real Valladolid CF, just days before the additional provision came into force, or the petition for an insolvency proceeding filed by Pontevedra a few days afterwards (more than likely in the first case they thought the additional provision had not yet come into force and in the second, that its subsequent implementation had not taken place), has confirmed, once again, the idiosyncrasies of the world of sport and its professionals, and is very closely linked to the requirements and pressures that came about, in Spain and throughout Europe, when the playing rules were broken, in relation to clubs that did "play by the rules" and met their payment obligations, as opposed to others (as happened with some Spanish football clubs) who failed to meet their obligations when they fell due, by making use of the petition for insolvency mechanism to postpone the immediacy of certain payments they had to make.

The debt levels of other European clubs caused certain European bodies to ask whether this could be seen as state aid to debt-ridden clubs, while at the same time applying pressure for the necessary compliance with their obligations, especially concerning their tax and social security debts, which had simply not been paid or been deferred, allowing the debtor clubs to continue signing up players without paying their overdue debts, in a practice that was seen as an infringement of the principle of equality among participants in competitions with respect to the clubs in other countries that *were* complying. The pressure of all this coupled with the country's economic situation were behind a proposal by the National Sports Council (CSD) and the Spanish Professional Football League Association (LFP) of a strategy of control over the clubs, to examine the football clubs' annual budgets, and accounts and the payment status of their tax and social security debts.

This was the context for additional provision number 2 *bis* and two court decisions rendered on two different cases, concerning Hércules CF and Orihuela, which had different outcomes; one, by Alicante Commercial Court number one, and another, by Panel 8 of the Provincial Appellate Court.

In the Hércules case, in view of a debt owed by the club to former coaches who had been dismissed (Esteban Vigo and his coaching team) and the federation rules which require the club to be up to date, at the end of the season, with the payment of sums owed to coaches

and players or to secure their payment, the Spanish Royal Football Federation (RFEF) adopted an injunctive remedy to temporarily ban them from issuing or renewing the licenses of football players or coaches. As was to be expected, this caused a gridlock for the club.

Faced with this response, and because, among other circumstances in the procedure, the debt owed to these coaches had been acknowledged in the insolvency proceeding, they filed a request with the commercial court judge to overturn that remedy, because the only effect it had was to prevent any business activity by the club involved in the insolvency proceeding. A decision rendered on July 20, 2012 found in favor of the club and accepted its arguments, since, from one angle, pre-insolvency order claims, such as those of the coaches, which had already been acknowledged cannot be "given preference" by being paid via this remedy and collected before the other claims, which would be collected as specified in the arrangement, and, besides, the federation's action was effectively preventing the insolvency debtor from continuing with its business activity, which is the essence of the insolvency proceeding. The decision was not appealed.

In Orihuela's case, in view of the Spanish Royal Football Federation's request for a guarantee for the debt under federation rules which require the clubs in the *Segunda B* division who have defaulted on payments due to coaches or players to provide a guarantee securing future payments to them, subject to a penalty of expulsion from the competition and relegation to a lower category, Commercial Court number 3, in a decision of July 31, 2012, upheld the club's appeal by finding that any injunctive remedy with financial content falls within the jurisdiction of the judge hearing the insolvency proceeding.

This decision was appealed, which was settled by the Provincial Appellate Court in a judgment rendered on 09/06/13, quashing the lower court's decision and rigorously applying the requirement in additional provision 2 *bis* to refer to the rules governing participation in the competition, which take precedence over the insolvency legislation itself, since it construed the requirement for the guarantee, as systematized legislation or rules, which are issued by the governing bodies of the various federations subject to control and supervision by the National Sports Council, and are mandatory to be able to participate in the competition.

2. *Judgment National Appellate Court of June 27, 2013 on the deduction of multiyear propaganda and advertising expenses in fulfillment of a program to prepare sportsmen and women for the Beijing Olympics*

Summary: the National Appellate Court held in its judgment that a tax credit cannot be taken in a year after that in which the propaganda and advertising expenses were incurred, bearing in mind that in the case under examination the authorities' prior recognition had not been obtained for the tax credit

Author: Félix Plaza

2.1 Introducción

This judgment attracted a considerable amount of attention, because of the conclusion it draws and additionally, in case it may be seen to depart from the view held by the Directorate-General of Taxes (DGT) in ruling of January 21, 2011 (CV0106/2011).

In the case examined in the judgment, the taxpayer had incurred in 2007 and 2008 a series of multiyear propaganda and advertising expenses in fulfillment of a program to prepare Spanish athletes for the 2008 Beijing Olympics.

That preparation program had been certified as an "event of exceptional public interest" by Law 4/2004, of December 29, 2005 amending the tax benefits and charges for events of exceptional public interest, for the purposes of article 27 of Law 49/2002, of December 23, 2002 on the tax regime for not-for-profit entities and tax incentives for patronage (the Patronage Law).

For the purposes of interest here, article 27.3 of the Patronage Law establishes in paragraph one that "Corporate income taxpayers, personal income taxpayers who carry on economic activities under the direct assessment system and nonresident income taxpayers operating in Spain through a permanent establishment may deduct from their gross tax liability 15% of the expenses which, in fulfillment of the activities plans and programs established by the consortium or by the relevant administrative body, they may incur on multiyear propaganda and advertising that serve directly to promote the respective event."

It adds in subarticle 27.5 that "*The procedure for taking the tax benefits envisaged in the support programs for events of exceptional public interest shall be established in the regulations.*"

To implement that article, article 9 of the regulations for the application of the tax regime of not-for-profit entities and of tax incentives for patronage, approved by Royal Decree 1270/2003, of October 10, 2003 determines the procedure for recognition of the tax incentives by the tax authorities, as follows:

> "*The prior recognition of the right of taxable persons to apply the tax credits envisaged for corporate income tax, income tax and nonresident income tax shall be performed by the competent body at the Spanish Tax Agency, following an application by the interested party.*
>
> *The application shall be filed at least 45 calendar days before the regulatory filing period for the self-assessment return for the tax period in which the tax benefit for which recognition is requested is to take effect. A certificate issued by the consortium or by the competent administrative body evidencing that the expenses giving entitlement to the tax credit to which the application relates have been incurred in fulfillment of its activity plans and programs shall be attached to that application.*
>
> *The maximum time period in which the express decision of the competent body must be issued in this proceeding shall be 30 calendar days from the date on which the application was entered on the register of that competent body…".*

To comply with the rules outlined above, the taxpayer applied to the Spanish Tax Agency (AEAT) on February 4, 2009 (namely, 45 calendar days before the start of the filing period for the return for fiscal year 2008) for prior recognition of the right to a tax credit equal to 15% of the multiyear propaganda and advertising expenses it had incurred in fiscal years 2007 and 2008 in fulfillment of the program to prepare Spanish athletes for the Beijing Olympics.

The suitability of the expenses incurred by the taxpayer had been confirmed by the consortium assembled for the purpose by issuing the relevant certificate.

It may be inferred from the judgment that although the taxpayer did not receive AEAT's prior recognition for the deduction, it decided nevertheless to take the tax credit in fiscal year 2008, in respect of both the expenses incurred in 2007 and those incurred in 2008, which resulted in the Agency's inspection authorities issuing the assessment challenged in this judgment.

2.2 View held by the National Appellate Court in its judgment

As the National Appellate Court states in its judgment, *"the core issue of the interpretation dispute is determining the "tax period" in which the right to the tax credit arises, given the absence of clear provisions on this subject in the legislation."*

The tax authorities argued, on the basis of a restrictive interpretation of the tax benefits, that the right to the tax credit arises in the period in which the expense occurs and that, therefore, the application for prior recognition of the right to take the tax credit must be made in the period established in the legislation in relation to exercising that right.

Taking the opposite view, the taxpayer argued that, if there is a lack of legislation, it cannot be ordered that both the certificate and the prior application must be handled individually for each fiscal year.

The National Appellate Court adopted the tax authorities' view and held that the right to the tax credit *"arises in the fiscal year in which those expenses occurred"*. Accordingly, *"if the expense relates to fiscal year 2007, recognition of the tax credit must occur in fiscal year 2008"* and it was in that year that the taxable person had to apply for prior recognition.

The Appellate Court argued that the application filed in 2009 cannot take effect retroactively to replace the application not filed in 2008 because filing the application is not simply a formality, "*but rather the necessary requirement to initiate the procedure to recognize the right to the sought tax credit; an application that must be made for each fiscal year involved on the dates required in the legislation."*

To support this conclusion, the Appellate Court quoted the Supreme Court's standard determined among others in its judgments of March 5, 2012 or July 7, 2008.

2.3 Commentary

In our view, an essential part of establishing a tax incentive such as the tax credit under the Patronage Law is to encourage businesses to incur promotion and advertising expenses in an attempt to secure the success of the event of exceptional public interest concerned.

The procedure established in the legislation is just a system for getting private businesses involved in advertising the event, which saves the organizers from having to incur the costs required for the necessary promotion of the event themselves.

In short, since the holding and success of the event is in the public interest, private sponsorship is used, for which the tax credit serves as an incentive.

Based on the above comments, the fact that the law says nothing on this subject could be taken to mean that the intention is for businesses to incur advertising expenses for the event in the period in which the law establishes a special tax regime for them. It would thus not be so important for the application for prior recognition to be filed in the fiscal year immediately following that in which the business incurred the expense, as for it to be filed in the fiscal year

immediately after that in which, within the period covered by the special tax regime, the tax credit is sought to taken (all of the above in accordance with the requirements set out in the implementing regulations for the Patronage Law).

This is definitely not the view that transpires from the National Appellate Court's judgment which chose to make a restrictive interpretation of the tax benefit provided in the law.

The question to be asked therefore is whether the view taken in the DGT's reply to the ruling request of January 21, 2011 must be regarded as having been set aside by the judgments issued later by the courts or, whether conversely, the DGT's view can coexist with the courts' view as they cannot be regarded as being at variance.

2.4 Ruling by the DGT of January 21, 2011

In its reply, the DGT examined a case in which the requesting entity sought to make throughout the event (January 1, 2009 through December 31, 2010) donations to the consortium to which it belonged, and incur multiyear propaganda and advertising expenses that served directly to promote the respective event.

The requesting entity asked whether as a result of the multiyear propaganda and advertising expenses it intended to incur in the context of that event of exceptional public interest, it could report, and if so, in what year, a tax credit for corporate income tax purposes in fiscal year 2009 even though the donation[i] to the organizing consortium was made in fiscal year 2010.

The DGT argued that, according to the General Taxation Law read in conjunction with the Civil Code and the interpretation made of it by the courts, the interpretation of the incentive contained in article 27.3 of the Patronage Law must be based on the ratio legis or aim of the provisions governing them and therefore the line taken for interpretation purposes should expectably be determined by the achievement of the political, economic, social, and similar goals behind those incentives.

Accordingly, the DGT argued that with the aim for all the propaganda and advertising expenses for publicity of the event, and the sums paid in respect of a donation, to be taken into consideration over the two years in which the event was held, so that the timing of any of them does not alter the ability to take the tax incentive, in order to calculate the incentive in each tax period the base and limit for the tax credit for the propaganda and advertising expenses for publicity of the event incurred between the start of the event and the end of the tax period must be taken as 90% of the donated sums computed in that time period, and therefore the resulting tax credit amount will be reduced by the deductible amounts calculated using that method in earlier periods.

Therefore, concluded the DGT, *"in the event the advertising and propaganda expenses are incurred in 2009, insofar as the donations to the Consortium were made in 2010, the requesting entity will be entitled to a 15% tax credit on the terms in article 27.3 of Law 49/2002, in fiscal year 2010, and to determine that tax credit all the expenses incurred in respect of advertising and propaganda in fiscal year 2009 and all the amounts donated in fiscal year 2010 must be computed."*

[i] Readers are reminded that the need to make a donation, among other potential entities, to the consortium that executes the programs for the event which serves as a limit for applying the tax credit was introduced in the Patronage Law for the fiscal years that began on or after January 1, 2007

In short, the DGT appears to be arguing that the tax credit in respect of the expenses incurred in 2009 can be taken in 2010, a view which, in principle, could be seen to run counter to that expressed by the National Appellate Court in the judgment being discussed.

Perhaps, however an eclectic interpretation is required of both views whereby it could be argued (according to the case examined in the ruling mentioned above) that the tax credit in respect of the expenses incurred in 2009 should be taken in 2010, if 45 days before the start of the filing period for the 2009 return an application was made to the tax authorities for prior recognition of the tax incentive (and it goes without saying the required certificate of the expenses had first been obtained from the consortium).

Thus, if the formalities have been fulfilled in the time periods interpreted by the National Appellate Court, in principle there would be nothing to prevent the tax credit being taken in a year after the year in which the right to take it arose (provided, of course, the right has not become statute-barred).

In any event, it would be desirable, in our view, for the Spanish courts to adopt a more purpose-based interpretation of the incentive which would allow the tax credit to be taken in a year after that in which the expense was incurred, provided the formal requirements envisaged in the regulations were fulfilled, although in relation (concerning their time periods) to the year in which the credit is sought to be taken and not to that in which the expense arose; the above in all cases within the period covered by the tax regime in the legislation governing the specific event concerned.

3. Latest government-approved tax measures with relevance to sports and entertainment

Summary: the government has introduced in the Entrepreneurs Law and in the law regarding measures on environmental taxation certain tax measures that might be relevant for sports institutions or those operating in the entertainment industry

Authors: Félix Plaza and Marta Benito

Law 14/2014 to support entrepreneurs and their internationalization was published on September 27, 2013 in the Official State Gazette. Additionally, Law 16/2013, establishing certain measures on environmental taxation and adopting other tax and financial measures was published on October 29, 2013. Below are the tax measures introduced by those laws that we believe should be noted because of the effects they may have on institutions operating in the field of sports and entertainment:

3.1 Special cash basis method for VAT purposes

A new special VAT regime, the special cash basis regime, has been introduced, set to come into force on January 1, 2014.

This is a voluntary regime that can be elected by taxable persons whose revenues in the previous calendar year were under 2 million euros. Under this regime, the VAT becomes chargeable when all or part of the price is collected, on the amounts actually received or if this has not occurred, it will become chargeable on December 31 of the year immediately following that in which the transaction was performed. VAT will be charged when the invoice is issued and delivered, but will be considered to take place upon payment of the transaction.

As regards which transactions qualify for this regime, the right to the deduction for taxable persons who have not elected the regime, but are the recipients of transactions included in it in relation to their input VAT will arise upon the payment of the price, or if this has not occurred, on December 31 of the year immediately following that in which the transaction is performed.

Additionally, this law sets out the same special regime for the Canary Islands indirect general tax, and that regime is also set to come into force on January 1, 2014.

3.2 Tax credit for creating jobs for workers with disabilities

Article 26.Three of the Entrepreneurs Law amended subarticles 44.2 and 44.3 of the Corporate Income Tax Law (Legislative Royal Decree 4/2005), on the tax credit for creating jobs for workers with disabilities. It has increased the amount deductible from the tax liability for each person by which, and year in which, the average number of employees with disabilities hired by the taxable person rose in the tax period, with respect to the average number of employees with disabilities in the immediately preceding period (previously set at 6,000 euros), by creating two bands:

- 9,000 euros for each person with a degree of disability between 33% and 65%
- 12,000 euros for workers with a degree of disability higher than 65%

It has also done away with the previous requirements for their contracts to be indefinite-term and for them to work full time. It is important to clarify that any hired workers giving entitlement to this tax credit will not be computed for the purposes of accelerated depreciation with job creation.

3.3 Tax credit for investments in Spanish productions of feature films and audiovisual series

Article 1.Five.Two of the law regarding measures on environmental taxation amended article 38.2 of the corporate income tax law, to change to 18% the tax credit for investments in Spanish productions of feature films and audiovisual series that can be created on a physical medium before serialized industrial production. It also clarified that the base for the tax credit will include the production cost, copies and any advertising expenses that may be borne by the producer, subject to a cap of 40% of the production cost. The tax credit can be taken from the tax period in which production of the work ends.

3.4 Tax credit for intangible assets with an indefinite useful life

Additionally, article 2.Two.Five of the same law regarding measures on environmental taxation amended article 26.3 of Royal Decree-Law 20/2012, of July 13, 2012 on measures to ensure budgetary stability and on encouraging competitiveness, in relation to the tax credit for intangible assets with an indefinite useful life under article 12.7 of the Corporate Income Tax Law, by setting an annual cap equal to one fiftieth of their value for the tax periods started in 2012, 2013, 2014 or 2015.

3.5 Prepayments

The new law extended to apply in fiscal years 2014 and 2015 the requirement to include in the amount on which prepayments are calculated 25% of the dividends and income earned in that year, to which the exemption to avoid international double taxation applies.

It has also extended the minimum prepayment determined by reference to earnings for accounting purposes for the year (at least 12% of the income figure in the income statement for the year for the first 3, 9 or 11 months), only for large enterprises (net sales/revenues figure higher than 20 million euros).

3.6 Special tax on certain means of transportation

An exemption has been introduced from the special tax on certain means of transportation for first registration or, in applicable cases, for the sailing or use of recreational craft or nautical sports vessels solely for the charter business, regardless of their hull length or those owned by nautical sports schools officially recognized by the Merchant Navy Directorate-General and actually and only used to perform teaching activities on them.

II. News

Seminar on current image rights issues in professional sport

On November 25 Garrigues held a seminar on current image rights issues in professional sport, organized jointly by professional football foundation Fundación del Fútbol Profesional and Garrigues Sports & Entertainment.

At the seminar, attended by Miguel Cardenal, Chairman of the National Sports Council/Secretary of State for Sport, Javier Tebas, Chairman of the Spanish Professional Football League, and Alejandro Blanco, Chairman of the Spanish Olympic Committee, respected jurists, academics and industry professionals analyzed current image rights issues in the field of professional sport. They broached subjects such as the ability to exploit images and the various related protection mechanisms or the treatment of the licensing of image rights for employment purposes. They also discussed the exploitation of images of sports events and competitions and its taxation.

Garrigues Sports & Entertainment pays tribute to Tomás Trenor, Garrigues lawyer and a benchmark in providing legal advice to sports entities

On the occasion of the national meeting of Garrigues Sports & Entertainment, which took place on November 26, honors were paid to the extensive professional career at Garrigues by attorney Tomás Trenor. Tomás has been a referral attorney in sports field that will continue to be linked from the teaching field.

III. New development

1. *Supreme Court judgment of May 24, 2013 on the assessment of wilful misconduct in the insolvency proceeding on Real Sociedad de Fútbol S.A.D.*

The Supreme Court's Civil Chamber analyzed the lodged cassation appeal petitioning for the Guipúzcoa Provincial Appellate Court's judgment to be overturned in which it had held there had been wilful misconduct by the appellants in the insolvency of Real Sociedad de Fútbol S.A.D. because they had engaged in the practices set out in article 164.1 of Insolvency Law 22/2003, of June 9, 2003, by perfecting fictitious loans and paying irregular invoices thereby worsening the budgetary position of the sports entity.

The judgment dismissed the cassation appeal by finding that the appellant, as company director, had not acted with the required standard of care in that "spending more than you are able implies serious negligence." A pleading of ignorance of the Company's economic situation to justify the appellant's acts was not accepted either.

2. *Supreme Court judgment of May 28, 2013 on the challenge of Royal Decree 1744/2011 by the Professional Cyclists' Association*

The Supreme Court heard the challenge by the Professional Cyclists' Association of Royal Decree 1744/2011 on doping control processes and the authorized testing laboratories. The appellant contended that there had been a number of defects in the preparation of that legislation and their only purpose had been to avoid fulfillment of the determinations in the Supreme Court judgment of October 13, 2011. The defects concerned related to the reduction in the period for inspection of the case file, to the reasons behind a mistaken premise for urgent approval of the royal decree, and, lastly, to the preparation of the legislation by the caretaker government without the existence of the grounds for doing so. The Association also objected to the provisions on health checks because they can only be carried out for valid reasons and combatting doping is not one of them.

The Court found that the preparation of these Regulations fell within what must be seen as "the normal conduct of business" in that it did not imply a change in political views and therefore, in terms of the context of its preparation, it was perfectly valid. The Court also found that the urgency requirement had been met because the IOC's requirements had to be satisfied with the shortest possible delay. The case relating to health checks was not upheld either by the Court as it found there was a relationship between health checks and the use of doping substances in that they can be harmful to health, and therefore their control cannot be confined to certain cases.

3. *Supreme Court judgment of June 25, 2013 on the liability or otherwise for damages for an unauthorized use of images of the 2009 Copa del Rey football championship final*

The Supreme Court analyzed the appeal brought by Bilbao Bizkaia Kutxa (BBK) against the Provincial Appellate Court's judgment awarding damages to Grupo Santa Mónica Sports (GSM) for the distribution and projection of images of the final of the Copa del Rey football championship in which GSM held rights under an agreement with the Spanish Royal Football Federation (RFEF).

BBK submitted its defense in a cassation appeal analyzing the nature of the rights held by GSM to determine whether it had an exclusive right that could prevent third parties from distributing images of the sports event. The Court concluded that the fact that the RFEF had granted certain rights to GSM on an exclusive basis does not mean that the agreement was the origin of "a right to exclusivity" which granted "ius prohibendi," exclusive power, in other words, in relation to the football match's images and sounds.

The rights that GSM could have in the football match ran out when it licensed them for a price to TVE, which produced the recording, since, according to the Court, there is no record that GSM reserved the right of initiative or retained responsibility with respect to the audiovisual recording. It therefore upheld the lodged appeal.

4. *Supreme Court decision of July 4, 2013 on admission of the cassation appeal for a ruling on a point of law lodged by Real Club Deportivo de la Coruña S.A.D.*

The sports entity filed an objection to the enforcement of an earlier judgment by the Supreme Court ordering the appellant to pay the worker, a professional football player, a sum of €845.853,65 as a result of the termination of the contract between them. Real Club Deportivo de la Coruña S.A.D. pleaded that the payment was subject to personal income tax withholdings which the club must make to pay them over to the tax authorities.

The Court failed to admit the cassation appeal for a ruling on a point of law in that the contrasting judgment produced did not bear the slightest amount of the required resemblance to the case at issue. The contrasting judgment related to withholdings on back pay, which are indeed subject to withholdings, whereas this case related to withholdings from severance for termination of the contract of a professional sportsperson, which are not required if it is the statutory severance, as was the case.

5. *Cataluña High Court judgment of April 17, 2013 on the licensing of image rights to a company*

The Court analyzed the attribution of income linked to the image rights of a R.C.D. Español player to that player's income for personal income tax purposes where the payments made by the sports entity are made to a company holding the footballer's image rights under an agreement concluded between both parties.

Basing itself on article 76 of the repealed Personal Income Tax Law 40/1998, concerning the attribution of income from the licensing of image rights, the Court determined that the interposition of companies for image rights payments cannot detract from the true destination

of those payments, which will ultimately be received by the individual who licensed those rights to the company. That rule, now given shape in article 92 of the current Personal Income Tax Law, is set up as an antiavoidance rule to avoid these types of arrangements, by establishing the 85% - 15% rule, which would not come into play if the Club has a right of its own in the player's image rights, separate from the player's own rights. The penalty to the taxpayer was rendered invalid, however, because there not been fault on his part.

6. *Cataluña High Court judgment of April 29, 2013 on a breach of the right to honor that the termination of an employment contract implied for the coach of the Spanish synchronized swimming team*

The Court analyzed the appeal lodged by the coach of the Spanish team against the judgment of the Tarrasa Labor Court in relation to the protection of her basic rights as she considered her right to honor had been breached with the termination of the agreement binding the appellant to the Spanish federation. She pleaded that both the dismissal and the subsequent publication and publicity in the media of the letter of dismissal had undermined her right to honor, which had been upheld in the lower court's judgment, although with slight discrepancies regarding the amount and form of the indemnification, the elements forming the basis for lodging the appeal.

The Court held that there was no question that the publication of the news of the dismissal of the coach and the resulting storm in the media over the circumstances and grounds for the dismissal, had undermined and breached the appellant's right to honor. The debate was confined to the existence of sufficient prima facie evidence to attribute the person responsible for distributing the news to the close circle of the Chairman of the Federation, who carried out the dismissal. The Chamber did not consider this point had been proven in that the defendant's participation in the dissemination of the dismissal had not been proven. Although the Court did not consider that the media hype of the dismissal could be blamed on the respondent, it did hold that the form and ground on which the dismissal had been based had caused a breach of the appellant's right to honor, by diminishing her professional credentials, giving rise to entitlement to financial compensation in the form of damages.

7. *Asturias High Court judgment of May 17, 2013 on creation and consent in a football player's contract by Real Oviedo S.A.D.*

The judgment deals with an appeal in which a football player applied for damages as a result of Real Oviedo withdrawing from the negotiations for a contract that would bind the player to the club. The player pleaded that the contract had been created and to prove this referred to the emails he had exchanged with the team during the negotiations in which he considered it clear that his consent had been given, besides supporting the path they had taken through articles and interviews in the sports press.

The Court dismissed the player's appeal because it considered the contract had not been validly created. Using the general theory of civil contracts, it argued that the necessary elements for a contract to be created are an offer and acceptance of that offer, in other words, the subject-matter and the reason for creating the contract. The Court held that the statements in the press reporting on the contractual relationship that was being finalized cannot be treated as unequivocal acceptance of the contract, when discrepancies over the subject-matter of the contract (term, financial payments, etc.) were evident from the emails

sent by the entity. The Court also threw out the second challenging ground based on the definition of precontractual liability by taking the view that preliminary dealings could not generate reasonable expectations of a future contract.

8. *Zaragoza Appellate Court judgment of June 24, 2013 on the termination of an artiste's representation agreement*

The Appellate Court discussed what the correct legal assessment would be in the termination of an artist's representation agreement between the client, (the artist) and the entity hired by the artist to advise, represent and promote him. The artist concerned was suing the company because he believed he was entitled to damages for termination of the contract initiated by the company. The company filed a counterclaim because it considered the breach giving rise to termination of the contract was attributable to the artiste. The Court of First Instance determined that the existence of a mutual loss of trust in the contractual relationship meant that the most appropriate assessment for the termination was "mutual dissent."

Following the artiste's appeal, the Provincial Appellate Court took a fresh look at the facts. In doing so it sought support in the general theory of contracts, specifically in the definition of reciprocal breach. Although true that in the case at issue it was the company that broke off the contractual relationship, it was compelled to adopt this decision by a loss of trust in, and lack of cooperation by, the other party. The Appellate Court held that the termination of the contract was not attributable to either of the parties alone, and reached the same conclusion as in the lower court's judgment by determining that the most appropriate legal assessment is "mutual dissent" and neither party was entitled to any indemnification payments.

9. *Andalucía High Court judgment of June 26, 2013 on the allowability of benefit for permanent incapacity applied for by a professional football player*

The High Court settled an appeal lodged by the National Social Security Institute seeking to set aside the lower court's judgment, in which a football player had been granted a pension for his permanent incapacity status caused by a string of injuries to his knee he had sustained over his sports career.

After revisiting the evidence, the judgment determined that the injuries were an inherent part of a professional football player's life because of the great physical effort that top-level sport requires and that, therefore, not just any health problem can give entitlement to receive a pension, such as the one sought by the claimant. The Court went as far as to say that being too flexible with recognizing permanent disability status for claimants from these types of professions could lead to discrimination with respect to the other workers under the social security system.

10. *La Coruña Appellate Court judgment of July 5, 2013 on where the jurisdiction lies for a lawsuit on payments for image rights to the company representing a player*

The Provincial Appellate Court analyzed an appeal lodged by Real Club Deportivo de la Coruña S.A.D. against a judgment by a lower court in the civil jurisdiction. The dispute was over the contract between the soccer club and a professional soccer player. The contract stipulated that

any payments made by the club in respect of the player's image rights would be made to a commercial company. When those payments stopped from the third season under the contract, the company filed a claim against the club requesting payment of the owed sum. The lower court judge found in favor of the claimant and acknowledged its right to receive those payments. In its appeal brief Real Club Deportivo de la Coruña S.A.D. contended that the civil courts did not have the jurisdiction to hear this case.

The Provincial Appellate Court dealt with the only contention submitted on the basis of the Supreme Court judgment of November 26, 2012. In that decision, the Supreme Court threw out the argument that the simple fact of licensing image rights to an interposed company removes the salary status of any remuneration associated with them. Insofar as the licensing of the right to use the player's image stems from the employment relationship alone, the jurisdiction to hear disputes of this type lies with the labor courts, and therefore the appeal was upheld.

11. *Castilla y León High Court judgment of July 17, 2013 on the application for acknowledgement of a pension for permanent incapacity making the applicant unfit for their regular occupation*

The Court analyzed the appeal lodged by a professional cyclist against the National Social Security Institute, the General Social Security Treasury, mutual insurance company Mutua Fraternidad Mupresa and Club Deportivo Burgos Monumental, in the belief he was entitled to benefit because he had permanent incapacity making him unfit for his regular occupation, as a result of the numerous injuries he had sustained from falls while working for the sports club.

The view in the judgment was at variance with the reasoning produced in the lower court's judgment, by holding that the injuries sustained by the cyclist diminished his abilities and skills to practice cycling and restricted him professionally, by depriving him of the full physical fitness required to practice sport at an elite level, in view of the requirements needed. Among the various injuries sustained by the cyclist, the Court focused its attention on one to his wrist, which, in the Court's view, prevented the cyclist from taking up the positions needed to drive the controls. The Chamber held the claimant's incapacity for the performance of the basic tasks of his profession had been evidenced, and held that he had been rendered permanently and totally unfit for his regular occupation with the right to receive a pension, ordering the mutual insurance company to pay that pension.

12. *Judgment of La Coruña Commercial Court number 2 of July 22, 2013 on the complaint in an ancillary proceeding to challenge creditors in the insolvency proceeding on Real Club Deportivo de la Coruña S.A.D.*

The Court analyzed the claim submitted by Real Club Deportivo de la Coruña S.A.D. concerning the failure to include players' signing bonuses, payable in June, on the list of creditors in its insolvency proceeding, because the insolvency order had been made before that date. The insolvency manager distributed the bonus for the contract, however, on a pro rata basis, contending that, as salary, it was earned on a day to day basis and is a pre-insolvency order claim.

The Commercial Court took the insolvency manager's side by holding, first, that the signing bonus is treated as salary and is earned on a day to day basis. It backed this first point with

the definition of salary given by Royal Decree 1006/1985 on the employment relationships of football players besides confirming its view through the case law of the Labor Chamber at the Supreme Court (judgment of February 13, 1990) which treated the signing bonus as salary. The second point stemmed from the first, in that insofar as the bonus is treated as salary it is earned on a day to day basis, because salary claims arise as and when the worker performs his work.

13. *Galicia High Court judgment of July 26, 2013 on a player's right to receive 15% of the payment for his loan to another team*

The judgment analyzes the appeal lodged by football club Club Atlético Lobelle de Santiago F.S. against the lower court's judgment recognizing a football player's right (former player at the club), to receive 15% of the price for loaning him, a right acknowledged in article 17.3 of the Collective Agreement for professional football. With the aim not to pay the football player 15% of his loan fee, the club pleaded that the article did not apply, in that he was not a professional football player.

The Court went beyond the formal tests to determine whether a player must be treated as professional or not. It used the definition that article 12 of Decree 1006/85 provides of a professional sportsperson: "professional sportspeople are anyone who under a relationship established on a regular basis engage voluntarily in the practice of sport for the account and within the scope of the organization and term of a club or sports entity in exchange for remuneration." By concluding that the football player's position fell within the definition set out above, the judge determined that the Collective Agreement for professional football did apply, and therefore he is entitled to the financial compensation described.

14. *DGT ruling of April 9, 2013 on the treatment for personal income tax purposes of a severance payment for unjustified dismissal received by a professional football coach*

The requesting party received a severance payment as a result of his unjustified dismissal, under article 15.1 of Royal Decree 1006/1985, of June 26, 1985 on the special employment relationship of professional sportspersons. In reply to whether the exemption under 7 e) of Personal Income Tax Law 35/2006 applied, the DGT, based on the Supreme Court judgment of November 18, 2009, concluded that the severance payment under that royal Decree was subject to a lower limit (two months) which must be exempt, under the legislation governing his employment. Any amounts over and above that lower limit must be treated as earned income and as such will not be exempt or give entitlement to the 40% reduction under article 18.2 of the Personal Income Tax Law.

15. *DGT ruling of May 14, 2013 on whether the tax credit for reinvestment of extraordinary income is available where players are signed without a transfer fee*

The DGT took a look at article 42 of the revised Corporate Income Tax Law to determine whether the reinvestment tax credit could be taken for transfers of professional football players who had been signed without a transfer fee. According to that article, the transferred elements on which the tax credit can be taken include intangible assets, which makes it necessary to determine the true nature of a "player transfer." It is a type of contract relating

to the services of the player not to the player himself and is a right with economic content. Under Recognition and Measurement Standard 5 in the Spanish Chart of Accounts and the Order of June 27, 2000, approving the rules adapting the Spanish Chart of Accounts to Sports Corporations, the "acquisition right" relating to players whose services have been hired without a transfer fee cannot be recognized in the entity's assets because they have been generated internally. Any subsequent transfer, however, will generate a revenue for accounting purposes which will be included in the transferor's tax base. This income will qualify for the tax credit because it relates to an intangible asset which, by nature, is in operation in the business that is conducted, even if that right is not recognized as an intangible asset under the accounting legislation.

16. *DGT ruling of August 8, 2013 on the nature of the payments received by the players for the Spanish national football team made by the federation as their share in advertising campaigns*

The ruling concerned the treatment that should be given for personal income tax purposes to the income that the players in the Spanish national football team receive as their shares in the revenues generated by the various advertising campaigns they carry out as members of the national team. The DGT held that the most appropriate characterization for these payments was as earned income, given the definition made of this item in article 17.1 of Personal Income Tax Law 35/2006. These payments are regarded, therefore, as deriving indirectly from services (personal work) provided by the players as a result of their selection, even where those payments refer to the revenues obtained by the requesting entity. Moreover, the payments are made to all the players in equal amounts, irrespective of the campaigns in which they have taken part, and cannot be seen as individual remuneration for their specific participation in a given advertising campaign.

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