

## WHEN AN OWN GOAL IS SCORED BEFORE THE GAME HAS STARTED

You do not need to be a sports enthusiast to know that football's world governing body FIFA has been embattled by corruption scandals surrounding its former president Sepp Blatter and his deputy and former football great Michel Platini<sup>1</sup>. The pair were each handed eight year bans from all football activity for an 'improper' payment from Blatter to Platini – two million Swiss Francs to be precise.

The bans meant the pair could not vie for any office in FIFA in the then upcoming elections<sup>2</sup> and despite the duo's frantic attempts to have the bans lifted, the elections proceeded in their absence<sup>3</sup>.

Blatter and Platini opted to settle their dispute with FIFA in the Court of Arbitration for Sport. The issue is, no matter what the outcome of the arbitration hearing, the image of the two may have suffered irreparable damage. The arbitrator's bigger challenge will be to repair the soiled images of the duo when ensuring equitable distribution of justice rather than their lost opportunity to run for office in the FIFA elections. They were accused of engaging in bribery, a fact seemingly based on hearsay evidence. All that was proven was that an 'inappropriate' payment was made by Blatter to Platini. The pair's defence is that it was payment based on a verbal contract between them for work that Platini did for Blatter at FIFA in the years 1998 to 2002. Swiss law places a five year time limit on such payments – the payment was made in 2011, nine years late. However the burden of proof still rests on the claimants.

The accusations facing Blatter had already damaged his reputation to such an extent that he was even being ridiculed in public before anything had been proven; once during a public function someone walked up to Blatter and threw legal tender in his face before security could whisk him out of site – a gesture meant to insinuate that Blatter

---

<sup>1</sup> Platini represented France at two World Cups and is a three time European Footballer of the Year Award winner

<sup>2</sup> The elections were held on 26<sup>th</sup> February 2016

<sup>3</sup> Swiss-Italian Infantino won and replaced Blatter as President of FIFA

was financially corrupt. A visibly embarrassed Blatter wondered aimlessly on stage for a few seconds before retiring backstage to allow the stage to be cleaned up for the function to proceed. On another occasion one of the team members now at the helm of FIFA said the following about Blatter “a fish rots from the head down and we know how rotten the head of FIFA was”. A statement reeking of negligent misstatement and which could result in pure economic loss.

It came as little surprise that when the FIFA ethics committee met to decide the duo’s fate, a ban was promptly decided upon with stony indifference despite their pleas of innocence. Could the ethics committee have been influenced by the shenanigans leading up to their decision.

Sports enthusiasts will confirm that Platini is considered as the greatest soccer player to emerge from France.<sup>4</sup> This scandal has tarnished his squeaky clean image especially among adoring fans who looked up to him for his sober demeanour while on the football pitch in his heyday and for his rise through the ranks to hold a very senior office in world football – a former star of the game now managing the game. Another case of pure economic loss?

This begs the question – what can the Court of Arbitration for Sport do to reverse damage done to sports icon’s reputations when they get involved in messy scandals that require arbitration? The irony is that in this case both were cleared of corruption charges. They were only accused of ‘failing to put FIFA first and abstaining from doing anything which could be contrary to FIFA’s interests – they violated their fiduciary to FIFA’. Duty of Care demands that Pure Economic Loss must be recovered too in the case of Negligent Misstatement. The damage to the reputation of the two is not tangible but huge. The accusations made by various FIFA officials apparently were without any evidence of fact – the accusers shoulder the burden of proof. Most of the accusations

---

<sup>4</sup> A recent survey placed Platini ahead of the great Zidane (a World Cup winner with France and three time World Footballer of the Year Award winner).

appeared to arise from hearsay. Negligent misstatement in this case may be an apt claim the pair of Blatter and Platini may take up as they seek damages for their loss.

As the ‘match kicks off’ for the new team at the helm of the FIFA presidency in leading the world’s football governing body, they may have scored an own goal even before the game started depending on the outcome of the arbitration hearing of ‘FIFA v Blatter and Platini [2016]’.

Qs. Gyavira Namulanda, MCI Arb

Partner

Future Works

Quantity Surveyors and Building Economists