

Is What is Good for the Goose also Good for the Gander?: A Diagnostics Appraisal of the FIFA’s Proscription of Third Party Ownership of Professional Footballers’ Rights

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Abstract. This paper takes a critical analysis of football transfer market rules of third party Ownership of Professional Footballers’ Rights by appraising the Case of Carlos Tevez and Javier Mascherano and FIFA’s restrictive measures. The work examines the essential underpinning principles and philosophical justification of the proscription of the practice by FIFA. In doing this, the work considers the sophistication and extant development of the various football continental bodies. The work concludes that what is good for the goose is not always good for the gander and as such total proscription is unacceptable

1. Introduction

Sports have been envisioned as “a world language with many dialects”. Sports are becoming more professional and the stakes are becoming higher than ever, disputes resolution takes on an increasingly important role in the industry. Football has expanded tremendously in line with modern realities. The football industry is as today complex, commercial, industrial and far from the mere pleasure, fun and enjoyment it used to be.

Football, or soccer as some regions of the world refer to it, is the world’s most popular sport. The game is not just a pastime, but also a massive, revenue generating industry. Football as it is today has grown from activities for mere pleasure, enjoyment and fun to complex and

commercialized activities. The game of football has been transformed from a semi-commercialized activity in which financial benefactors supported teams and any aim of making financial profit was secondary to the glory of the game to a ruthless business operation. It is interesting to note that football accounts for more than five percent of world trade and some over five million jobs directly and indirectly related to football have been created.

2. Football Contract and Transfer Market

Football contract is a term used to describe the legal contractual issues at work in the world of football game. It is a combination of entertainment law, contract, tort, criminal law, commercial law, intellectual property, labour law, law and practice of dispute resolution. With the professionalism, media coverage, commercialization, impact of law and modern realities in football came also the idea of football transfer contracts. Football Transfer Contracts go beyond an arrangement between players and club. Football contract reflects many spheres of football such as players’ transfer, licensing, sponsorship, endorsement, merchandising, image rights, broadcasting arrangements, advertisement, insurance, kits and apparels manufacturing, collective bargaining agreement, discipline, loan, players and clubs’ obligations, restraint of trade, privacy rights, defamation,

football regulations and specially dispute resolution.

Transfer market on the other hand in professional football, is the arrangement through which players change clubs through the international transfer system, whereby clubs buy and sell players. According to a learned author, transfer system in sport is economic exchange in every sense, social and material. However, what is being given economic value and exchanged in the transfer market is not the player and his labour (for that he receives a salary) but some other concepts of value integral to his labour. The process is a typical sales transaction that involves a buyer and seller negotiating and agreeing on a fee, after which the player moves to the new club. The player signs an employment contract with the new team and receives a bonus called a "signing-on" fee, while the player's old club receives the transfer fee from the purchasing club. Football transfer contract comes with salient features such as the contract must be in writing, duly signed by both parties with date and place mentioned in the contract and each signatory party receiving a copy of the contract and another copy forwarded to the Professional League and or member Association for registration according to the provisions of the competent football body. The agreement must further state the full name, birth date, nationality, full address of the residency of the player in case of individual and in case of club, the name of the club and the person representing the club. The agreement defines a clear starting date (day, month and year) and the ending date.

3. Third Party Ownership of Professional Footballer's Right

Third party ownership of professional footballer's rights is a practice that involves a professional footballer signing a contract with a third party that is unaffiliated with a professional team and or football industry, whereby the third party finances the player's development in exchange for the rights to the player's transfer fee. The Carlos Tevez and Javier Mascherano transfers saga were the events that brought third party ownership of professional footballers to

the limelight, media scrutiny and legal discourse.

In this case, Kia Joorabchian was said to have entered into a ten-year agreement with football club Corinthians of Sao Paulo, Brazil in the year 2004. Based on the agreement, Joorabchian's London-based company, it was reported Media Sports Investments invested 35 million dollars in the club in exchange for 51 percent of the club's future profits. Corinthians Football Club in the Brazilian football was said to have broken domestic transfer fee record by purchasing Tevez from Club Atldtico Boca Juniors, a Buenos Aires, Argentina club, for 22 million dollars, and Mascherano from Club Atldtico River Plate, another Buenos Aires club, for 15 million dollars which as of then was exceptional. After a huge successful season, many of the top European clubs, including English Premier League (EPL) giants Chelsea, Manchester United, Liverpool and Arsenal, were rumored to be in the transfer market for the two players.

By August 2006 at the opening of the transfer window, West Ham United signed the two players away from Corinthians football club on an undisclosed transfer fee though rumored to be exorbitant as well. Tevez and Mascherano arrived at the West Ham united Football Club amidst this controversy and applaud but they received limited playing time at the beginning and their future with the Upton Park club was in doubt under Magnusson's ownership. West Ham therefore decided to send Mascherano on loan to Liverpool Football Club during the January 2007 transfer window.

Tevez, on the other hand continued with West Ham football team that was fighting and battling with threat of relegation from the English Premiership League to the championship side. Meanwhile, West Ham's relegation fight was to be determined by the last match of the season; incidentally Tevez's winning goal against Manchester United was a decider and thus ensured West Ham's continuation in the English Premiership League. This also means consequently that another team will suffer relegation. In this instant case, it was Sheffield United that was relegated accordingly to the League Championship.

Therefore, Sheffield United claimed that their relegation resulted in a revenue loss of 50 million pounds, and requested arbitration before the Football Association. West Ham as some commentators said as if to appreciate its survival in the English Premiership League and the role played by Tevez agreed to transfer him to Manchester United on August 2007 a more robust and career enhancing club. The deal, however, appeared frustrated because the English Premier League demanded that West Ham be the sole recipient of the transfer fee since the club earlier argued during its disciplinary proceedings of April 2007 that it had terminated the third party ownership of Tevez's rights. This arrangement is unpleasant to Joorabchian and swiftly disagreed, maintaining that he never agreed to terminate the contract and that in any case, he still owned Tevez's economic rights. He further argued that on the other hand, since Tevez was only on loan at West Ham, the club has no right to participate in the transfer fee. Joorabchian immediately maintained an action against West Ham for breach of contract. The parties requested FIFA's intervention, but FIFA refused to intervene and suggested rather that the dispute go before the Court of Arbitration for Sport.

Finally, on August 3, 2007, the parties reached an agreement under which West Ham received two million pounds for Tevez's registration, thus releasing the Argentine from any obligation with West Ham and allowing him to sign with Manchester United. Tevez moved to Manchester United football club. However, the player did not break ties with MSI because Manchester United entered into a loan agreement with Joorabchian for five million pounds and an additional five million pounds per year in wages for Tevez. On February 7, 2008, Joorabchian filed a writ with the Chancery Division of the High Court in England against the club for seven million pounds he claims West Ham owes him as payments it botched to make on the Tevez loan and transfer. The EPL reviewed and approved the agreement on the grounds that it was not in any way subject to third party authority. However on April 7, 2007, the English Premiership League issued West Ham a 5.5 million pound fine.

FIFA immediately and swiftly reacted to the scandal of third party ownership of economic rights of players as widely exposed by the transfer of Tevez by enacting the controversial Article 18b. This amendment was set and was actually made to come into effect in the 2008-2009 seasons, and it states,

Before registering a player for a club the board will need to be satisfied there exists no agreements with third parties under which such third parties continue to own any registration or economic rights or the like in the player following registration.

FIFA further threatens severe disciplinary measures for any club and federation that fail to abide by Article 18. This means, therefore, that clubs entering into contracts where a third party holds the economic rights of a player could be subjected to penalties that range from playing a match without spectators, deduction of points, to expulsion from the league.

Having noted the issue of third party ownership interest of a player and the outright ban of same by FIFA, this research work is of the view that this case raises certain fundamental issues apposite to our present discussion. Key amongst which are is outright ban the solution to third party rights of professional footballers, second does the ban imposed by FIFA takes a critical consideration of the underpinning motives and philosophical justification of the practices in some football continental bodies, especially where the game is still a bit backward? Also must FIFA legislate on this issue or could it be better to allow individual federations to deal with some matters upon individual peculiarities?

The proponent of the outright ban hinges their argument on the facts that the third party agreement could destroy the integrity of the game (maybe in their view as "he who pay the piper calls the tune") just as what happen where some clubs enjoys same ownership and playing in the same league. This argument is not absolute otherwise one can also say that the footballer agents, a father-figure coach, one's federation etc could as well influence players to compromise the integrity of the game. They

advanced another argument that the system may amount to human trafficking and that the system may hamper the effectiveness of the transfer system in the game of football.

4. Conclusion and Recommendations

This work considers the arguments raised by the proponent and those who argued against it. This article suggest first that the Federation of International Football Association, the various Confederations, federations and clubs should pay consistent and futuristic attention to young players' development. In Nigeria, for instance, this study notes the need for provisions on development of feeder teams and feeder teams are to be made mandatory in all classes and there must be measures put in place to ensure adherence. This recommendation will ensure internal development o players. The idea we submit is to create a pipeline through which talents can graduate from such club feeder teams to the main team without the club visiting the general transfer market incessantly.

This work suggests regulation of the system rather than proscription of it. The system works especially in the developing countries as young players are developed, exposed and their careers financed by the third party in anticipation of financial reward. It is basically something for something. It is purely business and so be it.

FIFA decision to ban the system may be seen as an attempt and battle to maintain its hegemony, autonomy and total "annihilation" of external threats. It is suggested that FIFA may insist on total disclosure of third party ownership interest in any transfer deal, short term deals and allowing confederation members to take a stand considering the efficacy, mutuality and economic reality of their distinct continent. The game is too advanced; take for instance in Europe if compare with Africa. What is good for the goose may not always be good for the gander.

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Robert C. Berry and Glenn M. Wong, *Law and Business of the Sports Industries: Common Issues in Amateur and Professional Sports*, Praeger Publishing, 2nd ed. (1993) available on http://www.amazon.com/law-business-sports-industries-professional/dp/027593862x/ref=ed_oe_h/002-7392497-3410460 assessed on the 24th January, 2011. A better course may be that an amateur¹ athlete participates in sports as an avocation while professional athlete vocation and financial rewards.

Article 2.7 Rules and Regulations of the Nigeria National League 2010/2011 Season which provides for Foreign Players/International Transfer of Players

Margaret MacDonald Transfers, contracts and personhood - an anthropological perspective (Feb,2003) International Sports Law Review pg 3- 10

FIFA Statutes, Art. 60(1), p. 40, available at <http://www.fifa.com/mrI/document/affederation/federation/> accessed on the 13th March, 2011 stating that "parties" include members, confederations, leagues, clubs, players, officials, and licensed match agents and players' agents.

FIFA Regulations on the Status and Transfer of Players, art. 5(1), p9 available <http://www.fifa.com/mm/document/affederation/administration/regulations>.

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