

**PHILIPPINE UNITED SALES COMPANY AND ANTONIO TIOCO,
PETITIONERS, VS. HON. SIMEON M. GOPENGCO, AS PRESIDING
JUDGE, BRANCH XXV, COURT OF FIRST INSTANCE OF MANILA, R
& B SURETY & IN...**

G.R. No. L-27728. February 29, 1972

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Before this Court are two related cases, both questioning the orders of the Court of First Instance of Manila in its Civil Case No. 65905, dated February 20, 1967 and June 6, 1967, respectively. The first case is a special Civil action for certiorari and/or prohibition (G.R. No. L-27728) and the second is an appeal (G.R. No. L-28075), the petitioners in one and the appellants in the other being the same, namely Philippine United Sales Company and Antonio Tioco (also known as Antonio Co).

Civil Case No. 65905 was commenced by the R and B Surety & Insurance Co., Inc., as plaintiff, against the Philippine United Sales Company (hereinafter to be referred to merely as United Sales) and Antonio Tioco, as defendants, for the recovery of a sum of money, with damages. These defendants, in turn, filed a third-party complaint against the Rural Power Corporation (hereinafter to be referred to merely as Rural Power) and the spouses Eusebio E. Ferrer and Lourdes Sison Ferrer (hereinafter to be referred to merely as the Ferrers).

Inasmuch as the orders complained of dismissed the third-party complaint upon motion of the third-party defendants before trial, and denied the third-party plaintiffs' motion for reconsideration, particularly their alternative prayer therein for the dismissal likewise of the complaint of R and B Surety against them, we deem it convenient, for a clearer projection of the issues, to reproduce the pertinent averments in the pleadings, especially the amended complaint of July 15, 1966.

The preliminary allegations refer to the corporate personalities of the plaintiff R and B Surety and of the defendant United Sales, and to the fact that the defendant Antonio Tioco was the latter's general manager, while Rural Power was headed by Eusebio E. Ferrer as president and Lourdes Sison Ferrer as treasurer. Reference is similarly made to the Republic Bank, of which "plaintiff (R & B Surety) is also a subrogee * * * by virtue of a Deed of Assignment dated June 15, 1966," copy of which had been attached to the original complaint and was made an integral part of the amended complaint.

The principal causes of action set forth in the amended complaint are the first and the second, and read as follows:

"AS FIRST CAUSE OF ACTION - DAMAGES ON ACCOUNT OF FRAUD

5. That on or about May 18, 1961, on joint application of the Rural Power and defendant United Sales and/or defendant Antonio Co, the Republic Bank issued Letter of Credit No. 61-0061 covering the full invoice value of electrical supplies purportedly to be purchased by the Rural Power (as Accountee therein) from the defendant United Sales (as Beneficiary therein) available by drafts drawn up to an aggregate amount of

P50,000.00, Philippine currency;

6. That to secure payment to the Republic Bank of any amount that may be drawn by defendant United Sales against said Letter of Credit No. 61-0061, defendant Antonio Co applied (jointly and severally together with the Rural Power, Lourdes Sison Ferrer, Treasurer of Rural Power, and Eusebio Ferrer, President of Rural Power) with plaintiff herein to become a SURETY upon a Surety Bond demanded by and in favor of the Republic Bank, in the sum of P50,000.00, Philippine currency, in behalf of the purported accountee and purchaser of electrical supplies the Rural Power (as Principal therein), for the period beginning May 18, 1961, until the same is cancelled and/or discharged;

7. That in accordance with defendant Antonio Co's application for a surety bond as alleged in the foregoing paragraph, herein plaintiff executed and issued on the same date Surety Bond No. G-2143 in the said amount of P50,000.00, a true copy of said surety bond being attached to the Original Complaint as Annex "B", and made an integral part of this Amended Complaint by reference thereto;

8. That on the same date, May 18, 1961, defendant United Sales, as Beneficiary, and defendant Antonio Co, as General Manager thereof, without having in fact sold or delivered any item of goods called for in the Letter of Credit No. 61-0061 from its inception and while it was in full force and effect, through misrepresentations and with use of simulatedly genuine invoices, negotiated said Letter of Credit to its full value with a draft drawn in the sum of P50,000.00, Philippine currency, which amount was paid them by the Republic Bank, copy of said draft being attached in the Original Complaint as Annex "C", and made an integral part of this Amended Complaint by way of reference thereto;

9. That in spite of demands, Accountee, the Rural Power, failed to pay the value of the goods purportedly sold and delivered to it by the defendant United Sales covered by and on account of the aforesaid Domestic Letter of Credit No. 61-0061, together with the bank charges thereon;

10. That as a result of non-payment by Accountee, the Rural Power, of the value of the goods purportedly sold and delivered to it under said Letter of Credit, together with the bank charges thereon, the Republic Bank demanded from, and caused the herein plaintiff Surety, pursuant to its Bond, Annex "B" of the Original Complaint, to pay to said Bank the total sum of P74,910.53, Philippine currency, representing the principal or value of the goods purportedly sold and delivered, interests, and bank charges, which in truth and in fact, said amount was paid by plaintiff unto the Republic Bank, to its actual damage and prejudice;

11. That defendant Beneficiary, the United Sales, had, from the time of the negotiation of the Letter of Credit, to this day, no rights to the proceeds thereof, the transaction covering the same having been willfully made and entered into by herein defendants fraudulently, deceitfully, and in bad faith, with intent to gain to the prejudice, damage, and expense of others; that defendants' fraud, deceit, and bad faith consists:

a) of drawing a draft in the sum of P50,000.00 against the Letter of Credit, there having been no actual sale or delivery of the electrical supplies while said letter was in full force and effect;

b) through the use of simulatedly genuine receipts and invoices to accompany the drafts drawn against the Letter of Credit;

c) through the use of manipulations to cover up the fraud, such as signing as co-applicants and as guarantors, volunteering and pretending to collect the account from innocent parties, presenting before everyone, including the Court, patently erroneous and dubious delivery receipts or waybills dated much earlier than the Letter of Credit and before the latter was ever conceived of;

d) disdainfully delaying and failing to pay unto plaintiff, a due, just, and demandable obligation.

12. That as a result of the aforesaid fraudulent and deceitful acts of defendants herein, plaintiff suffered actual damages in the sum of P74,910.53, and plaintiff is entitled to the recovery, restoration, or reimbursement thereof

from both defendants, jointly and severally;

13. That in view of the willful injury caused by defendants to the property rights of herein plaintiff, their breach to pay a just, due, and demandable obligation, their violation and invasion of plaintiff's rights, and for the causes cited in the allegations above, plaintiff is entitled to moral and nominal damages in the sum of at least P15,000.00;

14. That by way of example and correction for the public good, defendants, for all their aforesaid willful, fraudulent and deceitful acts, made in gross and evident bad faith, are likewise liable unto plaintiffs for exemplary or corrective damages in the sum of at least P15,000.00.

AS SECOND AND/OR ALTERNATIVE CAUSE OF ACTION - INDEMNITY BASED ON CONTRACT: LIABILITY THEREON OF DEFENDANT UNITED SALES THROUGH COMPLICITY ON ACCOUNT OF FRAUD AND GAIN -

Plaintiff hereby reproduces by reference all the allegations contained from paragraphs 1 to 14 above, and further alleges:

15. That plaintiff Surety executed the Surety Bond attached as Annex "B" of the Original Complaint mainly at the instance, behest and representations of defendant Antonio Co, and the same would not have been executed, issued, and released to the Republic Bank had not said defendant, in his individual and personal capacity, and of his assurances as General Manager of defendant United Sales that the transaction was above board and purely legitimate, executed on the same date, May 18, 1961, an Indemnity Agreement in favor of the plaintiff, a true copy of which is attached as Annex "D" of the Original Complaint and made part of this Amended Complaint by reference thereto;

16. In the aforesaid Indemnity Agreement, defendant Antonio Co bound and obligated himself jointly and severally, to indemnify plaintiff for any damage, prejudice, loss, costs, payments, advances and expenses of whatever nature or kind which plaintiff may, at any time become liable for, sustain or incur as a consequence of having executed the aforesaid Surety Bond, its renewals, extensions and/or substitutions;

17. In the same Indemnity Agreement, defendant Antonio Co likewise bound himself, jointly and severally, to pay interest to the plaintiff on any and all sums of money so paid by plaintiff at the rate of 12% per annum, which interests if not paid will be accumulated monthly and added to the capital in order to earn interest as the capital, and the total sum thereof or not;

18. That as stated in paragraph 10 of this Amended Complaint, herein plaintiff Surety has paid unto the obligee Republic Bank the Sum of P74,910.53, which amount defendant Antonio Co is bound to indemnify unto plaintiff in accordance with his Indemnity Agreement attached to the Original Complaint as Annex "D", with interest thereon at the rate of 12% per annum from May 18, 1961, until the obligation is fully paid;

19. That in spite of oral and written demands made on Antonio Co, he failed and refused, and to this day fails and refuses to pay his just, due, valid and demandable obligation in accordance with the terms of his Indemnity Agreement to the damage, loss, and prejudice of the plaintiff;

20. That defendant United Sales, having been a party to the fraud, benefited wholly from the transaction by drawing directly against the Letter of Credit, using the Indemnity Agreement as one of the instruments to perpetrate the fraud, and being a full beneficiary to all the acts of its General Manager, the other defendant Antonio Co, is, and must be jointly and severally liable to the plaintiff with said defendant Antonio Co in accordance with the terms and conditions of the Indemnity Agreement, and that is to indemnify plaintiff in the sum of P74,910.53, with interest thereon at 12% per annum from May 18, 1961, until the obligation is fully paid."

The third cause of action is for recovery of unpaid premiums on the surety bond for several renewals thereof after

its original life of four months from its execution on May 18, 1961; and the fourth and last cause of action is for recovery of attorney's fees in view of the unjust and unreasonable refusal of the defendants to pay the amounts claimed under the first three causes of action.

The defendants moved to dismiss the complaint on the ground of res adjudicata, but the motion was denied. They then filed their answer with a counterclaim against the plaintiffs, and subsequently a third-party complaint against Rural Power and the Ferrers, with the following pertinent allegations:

"* * * *

2. In or about December 1960 to January 1961, third-party plaintiff United Sales sold and delivered to third-party defendant Rural Power electrical supplies with a total value of P50,000.00. But due to lack of cash, third-party defendant Rural Power was unable to pay third-party plaintiff United Sales the purchase price within a reasonable time after delivery of the supplies.

3. Third-party defendant Rural Power, through its officers, herein third-party defendants Ferrers, solicited the help of third-party plaintiff Tioco to obtain a loan for the amount of the purchase price. A few days before May 18, 1961, third-party plaintiff Tioco introduced third-party defendant Ferrers to the Republic Bank for the purpose of securing a loan.

4. Republic Bank agreed to extend a loan to third-party defendant Rural Power through the issuance of a letter of credit for P50,000.00 in favor of third-party plaintiff United Sales, third-party defendant Rural Power to pay Republic Bank within four (4) months and on the conditions (i) that third-party plaintiff Tioco would guarantee in his personal capacity the obligation of third-party defendant Rural Power and third-party defendants Ferrers under the application and agreement for the issuance of a letter of credit, (ii) that third-party defendant Rural Power would execute a trust receipt in favor of Republic Bank over the electrical supplies sold and delivered by third-party plaintiff United Sales to third-party defendant Rural Power, and (iii) that third-party defendant Rural Power would obtain a surety bond from R and B Surety & Insurance Co., Inc. (hereinafter referred to as R and B Surety) to secure the performance of its obligations under the agreement for issuance of a letter of credit and under the trust receipt.

5. In compliance with the requirements of Republic Bank, third-party plaintiff Tioco on May 18, 1961 signed in his personal capacity as co-applicant with third-party defendant Rural Power the application and agreement for the issuance of a letter of credit, a copy of which is attached hereto and made a part hereof as Annex "A"; third-party plaintiff Antonio Tioco also in his personal capacity and together with third-party defendants Rural Power and the Ferrers, executed on the same date the indemnity agreement in favor of R and B Surety, a copy of which is attached to the original complaint as Annex "D" and is made a part hereof by reference; and third-party defendant Rural Power executed and delivered on the same date to Republic Bank a trust receipt, a copy of which is attached hereto and made a part hereof as Annex "B".

6. On May 18, 1961, Republic Bank issued domestic letter of credit No. 61-0061 in favor of third-party plaintiff United Sales for the account of third-party defendant Rural Power available by drafts up to the amount of P50,000.00 covering the full invoice value of the electrical supplies sold and delivered by third-party plaintiff United Sales to third-party defendant Rural Power. A copy of the letter of credit is hereto attached and made a part hereof as Annex "C".

7. On May 18, 1961, third-party plaintiff United Sales drew a draft in the amount of P50,000.00 against domestic letter of credit No. 61-0061 of Republic Bank, which draft Republic Bank paid. A copy of the draft is attached to the original complaint as Annex "C" and is made a part hereof by reference.

8. The agreement for the issuance of a commercial letter of credit (Annex "A" hereof) and the indemnity agreement (Annex "D" of the original complaint) do not reflect the true intent and agreement of the parties insofar as third-party plaintiff Tioco is concerned, the true intent and agreement of the parties being that he

would only be liable as a guarantor of third-party defendants Rural Power and the Ferrers.

9. The true beneficiaries of the loan extended by the Republic Bank through the issuance of the domestic letter of credit (Annex "C") were the third-party defendants Rural Power and the Ferrers.

10. On June 28, 1966, R and B Surety filed a complaint against the herein third-party plaintiffs in the Court of First Instance of Manila (Civil Case No. 65905), which complaint was amended on July 18, 1966, praying for the recovery of the sum of P74,910.53 allegedly representing the amount paid by R and B Surety to Republic Bank under the surety bond, with legal interest until fully paid; the sum of P21,000.00 allegedly representing the amount of premiums for the extensions of the surety bond, with legal interest until fully paid; the sum of P350.00 allegedly representing the cost of documentary stamps; the total sum of P30,000.00 as moral, nominal and exemplary damages; the sum equivalent to 25% of all sums due as attorney's fees. A copy of the amended complaint is attached hereto as Annex "D" hereof.

11. On October 18, 1966, third-party plaintiffs filed their answer to the amended complaint of R and B Surety in Civil Case No. 65905, a copy of which is hereto attached and made a part hereof as Annex "E".

12. As a direct result of the filing of Civil Case No. 65905, third-party plaintiff Tioco has suffered and will continue to suffer mental anguish, serious anxiety and similar injury, for which he is entitled to moral damages in such amount as this Court in its discretion may determine; and third-party plaintiffs have been compelled to litigate, thereby incurring attorney's fees in the amount of P10,000.00 in addition to other expenses of litigation the amount of which will be proven during the trial.

13. In the event a judgment adverse to herein third-party plaintiffs is rendered in the principal action filed by R and B Surety, third-party plaintiffs are entitled to indemnity from third-party defendants Rural Power and the Ferrers for whatever amount third-party plaintiffs or either of them may be ordered to pay R and B Surety, and for moral and actual damages which third-party plaintiffs have suffered by reason of the suit, as well as the attorney's fees and expenses of litigation third-party plaintiff have incurred as a result thereof."

On January 14, 1967 Rural Power and the Ferrers moved for the dismissal of the plaintiffs' complaint on the ground of res adjudicata. The motion was later on supported by a memorandum, in which the motion was referred to as one "to dismiss the third-party plaintiffs' complaint and the plaintiffs' complaint."

It appears that another case (Civil Case No. 51783) had been filed on September 27, 1962 in the Court of First Instance of Manila by R and B Surety against Rural Power and the Ferrers for the recovery of the following amounts: P50,000.00 for which the plaintiff had become liable to the Republic Bank by virtue of the surety bond issued by the plaintiff to secure the letter of credit which had been issued by the said Bank in behalf of Rural Power and collected by United Sales; P4,567.60 for unpaid premiums on the renewals of said bond; and attorney's fees equivalent to 20% of P50,000.00. The specific basis of the claim against the defendants was the indemnity agreement they had signed, wherein they "obligated themselves to indemnify the surety company for any damage, prejudice, loss, costs, payments, advances and expenses of whatever kind and nature, including attorney's fees, which the Corporation (R and B Surety) may, at any time, become liable for, sustain or incur, as a consequence of having executed the above-mentioned Bond * * *."

After trial, judgment was rendered by the court on June 29, 1963 dismissing the complaint upon the following findings:

"* * *. The plaintiff, however, has not presented in evidence the letter of credit itself or the document evidencing the acceptances made by the Rural Power Corporation. There was no way of determining whether the principal debtor failed to fulfill its obligation under the terms of the letter of credit and consequently no finding can be made that the plaintiff had already become liable to the Republic Bank on its surety bond.

Moreover, one of the conditions of the surety bond was that the plaintiff would not be liable for any claim not presented in writing within 30 days from the expiration of said bond or September 18, 1961, and that the Republic Bank must enforce its claim thereon not later than one year from the time its cause of action accrues. No evidence was presented showing that the Republic Bank presented its claim in writing to the plaintiff within thirty (30) days from September 18, 1961. Besides, up to the present, no suit has ever been filed by the Republic Bank against the plaintiff so that whatever right of action the former had against the latter would have prescribed.

Besides, to hold the defendants liable to the plaintiff for the amount herein sought to be recovered would result in undue enrichment to the benefit of the latter but to the prejudice of the former. A judgment against the defendants in favor of the plaintiff in this action would not relieve the Rural Power Corporation from liability to the Republic Bank. This is so because the right of action of the Republic Bank is based upon the letter of credit issued by it for the account of the Rural Power Corporation and the acceptances made by this defendant of the draft drawn by the beneficiary of the letter of credit. Under this situation, said defendant would run the risk of being made to pay to two different parties in connection with one and the same obligation, especially so when as in this case the plaintiff, as surety, has not paid the principal creditor but has commenced an action against the principal debtor and his indemnitors.

The claim of the plaintiff for the payment of the renewal premiums on the surety bond, in the opinion of the Court, is not well taken. The plaintiff has not shown that the original period of the surety bond had in fact been extended. No proof has been adduced that the principal creditor or any of the defendants had asked the plaintiff to grant or consent to the granting of an extension of the period of the surety bond. On the other hand, defendant Eusebio E. Ferrer categorically stated that the principal debtor did not request for renewal of the surety bond and as this testimony was not rebutted by the plaintiff, it must be presumed to be true. Under these circumstances, the defendants cannot be held liable to pay to the plaintiff any renewal premium on the surety bond."

The foregoing judgment in Civil Case No. 51783, from which no appeal was taken, was the basis of the claim of res adjudicata asserted by the third-party defendants Rural Power and the Ferrers in their motion to dismiss the complaint in Civil Case No. 65905. As heretofore stated, the trial court held in its order of February 20, 1967 that the motion was well-taken, but dismissed the third-party complaint instead. The third-party plaintiffs moved for reconsideration, alleging that the court could not *motu proprio* dismiss the third-party complaint since the motion for dismissal referred to the complaint, and that the cause of action pleaded in the third-party complaint was not foreclosed by the final decision in Civil Case No. 51783. Alternatively, the third-party plaintiffs prayed that the rule of res adjudicata be likewise applied insofar as the complaint against them was concerned, in effect reiterating the previous unsuccessful motion to dismiss they filed before answering the complaint. The motion for reconsideration was denied by the trial court in its order of June 6, 1967.

From the aforesaid orders of February 20 and June 6, 1967, insofar as they dismissed the third-party complaint, the defendants and third-party plaintiffs, United Sales and Antonio Tioco, duly perfected their appeal to this Court (G.R. No. L-28075); and insofar as they denied the alternative prayer for the dismissal of the complaint against them, they filed the corresponding petition for certiorari and/or prohibition (G.R. No. L-27728).

The appellants' position in G.R. No. L-28075 is: first, their third-party complaint against Rural Power and the Ferrer was not barred by the prior judgment in Civil Case No. 51783 because there is no identity of parties, of causes of action and of issues in the two cases; and second, the motion to dismiss was directed at the complaint and not at the third-party complaint.

The second ground is borne out by the record. The motion opens thus: "COME NOW the third-party defendants, through their undersigned counsel and unto this Honorable Court respectfully move for the dismissal of the

plaintiff's complaint * * *", and ends with this prayer: "WHEREFORE, third-party defendants respectfully pray to this Honorable Court to DISMISS the plaintiffs' complaint with treble costs." The reference in the opening paragraph of the third-party defendants' memorandum that it was "in support of their motion to dismiss the third-party plaintiffs' complaint as well as the plaintiff's-complaint" is obviously without significance, since there was no motion to dismiss the third-party complaint to speak of, and since the very petitory part of the same memorandum "prayed that the plaintiff's complaint be dismissed on the ground that it is barred by prior judgment." The trial court, in our opinion, erred in granting a relief which had not been sought and against a party that did not oppose, as it had no reason to oppose, the relief which was sought but denied.

On the question of whether or not the judgment in Civil Case No. 51783 constitutes *res adjudicata* with respect to the third-party complaint herein, we believe that this plea is at best not indubitable and should properly, if at all, be alleged in the answer and resolved after trial on the merits instead of on a simple motion to dismiss - especially a motion to dismiss, not the third-party complaint filed by the defendants, but the complaint filed by the plaintiff against them. It should be noted that the previous litigation, Case No. 51783, was brought by R and B Surety against Rural Power and the Ferrers on the basis of the surety bond put up by the plaintiff to secure the letter of credit of P50,000.00 issued by Republic Bank in behalf of Rural Power and in favor of United Sales, to cover the invoice value of electrical supplies contracted for or supplied by United Sales to Rural Power. United Sales drew the corresponding draft for the full amount of P50,000.00 on the letter of credit, which draft was promptly paid by Republic Bank. Payment was thereafter demanded by the Bank from Rural Power, and upon its failure to pay R and B Surety made good the obligation by virtue of the bond, or so it is alleged in the amended complaint herein. In the suit filed by R and B Surety against Rural Power and the Ferrers, as indemnitors, the complaint was dismissed mainly upon the ground of insufficiency of evidence on the part of the plaintiff: the letter of credit itself was not presented, nor was there a showing that Republic Bank had presented its claim to R and B Surety within the period stipulated in the bond so as to make the latter liable thereunder. Moreover, according to the Court in its decision, a judgment in favor of R and B Surety would not relieve Rural Power from liability to Republic Bank, "because the right of action of the Republic Bank is based upon the letter of credit issued by it for the account of (Rural Power) and the acceptances made by this defendant of the draft drawn by the beneficiary of the letter of credit."

In other words, irrespective of the surety bond and of the judgment rendered against R and B Surety in the suit it filed on the basis of said bond (Case No. 51783), the facts alleged in the present case (Case No. 65905) which make out a cause of action for recovery are: that Republic Bank extended a loan in behalf of Rural Power for electrical supplies it had obtained from United Sales; that the amount of said loan was collected by the latter; and that the same has not yet been paid either by Rural Power or by United Sales. Now the present suit has been instituted by R and B Surety against United Sales and Antonio Tioco not only as subrogee of Republic Bank by virtue of the surety bond and of the indemnity agreement which Tioco signed as one of the indemnitors, but as assignee of the same Bank in respect of "any and all claims, causes of action, interests, rights and participation that the BANK may have * * under and by virtue of, and arising from and connected with, all the transactions involving said Letter of Credit * * *." The deed of assignment, as already noted, was executed on June 15, 1966.

Inasmuch as R and B Surety, as assignee of the Republic Bank, has not received payment for the amount collected by United Sales on the said letter of credit, it undoubtedly has a right to sue for recovery, especially in view of the alleged fraud perpetrated by the defendants in connection with the application for and issuance of the letter of credit. This right is properly asserted in the first cause of action in the amended complaint, and is separate from and independent of the right claimed by the plaintiff R and B Surety by virtue of its having allegedly paid its liability to Republic Bank under the surety bond, which right is the subject of the second and/or alternative cause of action. On the other hand, if the defendants, United Sales and Antonio Tioco, should be held liable under either

or both causes of action, their claim against the third-party defendants, who were after all the ultimate beneficiaries of the transactions which gave rise to the present case, should not be foreclosed by a simple motion to dismiss. Otherwise, these third-party defendants would be unduly enriched at the expense of the other parties, particularly the third-party plaintiffs.

WHEREFORE : (a) In Case No. L-27728, the writ prayed for is denied; and (b) in Case No. L-28075, the order of the lower court of February 20, 1967, dismissing the third-party complaint, as well as the order of June 6, 1967, denying the motion to reconsider the dismissal, are reversed and set aside, and the case remanded for further proceedings on the merits.

Concepcion, C.J., Reyes, J.B.L., Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

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