

VITO OSCAR PARAS AND RITA PARAS, PETITIONERS, VS. JOSEFINA B. LIZADA, RESPONDENT.

Ponente: LOPEZ, J.

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LOPEZ, J.:

Petitioners, by way of petition for review under Rule 42 of the Rules of Court, seek the reversal of the Decision[1] dated July 1, 2009 of the Regional Trial Court of Davao City, Branch 16,[2] which affirmed with modification the Decision[3] dated December 8, 2008 of the Municipal Trial Courts in Cities of Davao City, Branch 2,[4] granting respondent's complaint for recovery of possession.

Petitioners likewise assailed the denial of their motion for reconsideration to the July 1, 2009 Decision.[5]

The Antecedents

On June 6, 2008, respondent Josefina B. Lizada filed a complaint[6] against petitioners spouses Vito Oscar Paras and Rita Paras for Recovery of Possession, Damages and Attorney's Fees before the Municipal Trial Courts in Cities (MTCC) of Davao City, docketed as Civil Case No. 20,842-2008. Respondent alleged that she is a co-owner of a 210-square meter residential lot known as Lot No. 552-G-1 which is a portion of a bigger lot covered by Transfer Certificate of Title (TCT) No. 326[7] located at Lanang, Davao City. The subject lot is adjacent to the residential property of petitioners with an area of 1,509 square meters, known as Lot No. 552-B-2-C-2-1 of Psd 70494 and covered by TCT No. T-288274[8] registered in the name of petitioners. She further alleged that by tolerance of her predecessors-in-interests and subsequently by her and her co-owners, petitioners were allowed to use the subject lot as parking area, flower garden and for other purposes.

On May 26, 2008, respondent demanded from petitioners to vacate the subject premises as her family will use the same.[9] However, petitioners refused to vacate and return the subject lot to her thereby depriving her of the reasonable use and enjoyment of the lot. The matter was eventually referred to the Barangay Chairperson for conciliation proceeding but no settlement was reached by them.[10]

Hence, she filed the complaint and prayed that after due proceedings, the court may render a judgment in her favor ordering petitioners and their assigns and successor-in-interest to vacate the subject lot and to deliver the possession of the same to her; that petitioners be ordered to pay Five Thousand Pesos (P5,000.00) as monthly payment for the use and enjoyment of the lot starting May 2008 and until they vacate the same; and that petitioners be ordered to reimburse her the sum of Thirty Thousand Pesos (P30,000.00) as attorney's fees as she was compelled to engage the services of a counsel plus Two Thousand Pesos (P2,000.00) per court appearances.

On July 21, 2008, petitioners filed their answer to the complaint.[11] They denied the allegations of respondent arguing that the subject 210-square meter lot referred to by respondent is actually a road known as Lizada Drive. They further argued that the house and lot they owned and occupied which is adjacent to the subject lot is previously owned by Prudencio Lizada, one of the predecessors-in-interests of respondent. The parents of petitioner Rita Paras purchased the property from Prudencio Lizada and thereafter, petitioners acquired the same from the parents of petitioner Rita Paras. Even before their property was conveyed by Prudencio Lizada to

petitioner Rita Paras' parents, Prudencio Lizada already utilized the subject 210-square meter lot as a road. In fact, the house, the gates and main entrances of their house are all facing the said road while the other side of the property is fenced. Thus, even Prudencio Lizada has intended that the entry of their house is always through the subject lot which is used as road.

By way of affirmative defenses, petitioners contended that respondent has no cause of action to take exclusive possession of the subject lot because the subject property is a road and it is part of the road network of the general area which was required when the whole property was subdivided by the original owners whom respondent claimed as her ancestors. They argued that the subject 210-square meter lot is just a portion of a bigger lot covered by TCT No. 326 and which portion is used as a road from the national highway going to the beach. The right to utilize the same as a road is part and parcel of the sale of their house and lot by the original owner Prudencio Lizada to petitioner Rita Paras' parents. Moreso, if respondent wished to convert the said portion for her personal use, then all the property owners of the many different parcels of land located along the said road should be impleaded as indispensable parties.

By way of compulsory counterclaim, petitioners alleged that because of the baseless action filed by respondent, they were compelled to engage the services of a counsel for a fee in the sum of Fifty Thousand Pesos (P50,000.00) plus appearance fee of Two Thousand Five Hundred (P2,500.00) per court hearing. As such, respondent should recompense them in addition to the other costs of litigation. Likewise, the baseless actions of respondent have caused them serious anxiety, moral shock and sleepless nights for which respondent should be held liable for moral damages in the sum of One Hundred Thousand Pesos (P100,000.00). Moreso, in order to teach respondent a lesson considering that the complaint was filed in bad faith in view of respondent's knowledge that the subject lot is a road, respondent should be held liable for exemplary damages in the amount of One Hundred Thousand Pesos (P100,000.00).

After due proceedings, on December 8, 2008, the MTCC rendered a decision[12] the dispositive portion thereof reads:

WHEREFORE, judgment is rendered in favor of the plaintiff (respondent in this case) and against defendants (petitioners in this case), their assign and successors-in-interests ordering them to peacefully vacate and to deliver the possession of Lot 552-G-1 to herein plaintiff; to pay the sum of P5,000.00 monthly for the use and enjoyment of said lot starting May 2008 until they vacate the same, to pay attorney's fees of P10,000.00 and to pay the costs of suit.

SO ORDERED.

Aggrieved, petitioners appealed to the Regional Trial Court (RTC) of Davao City.

On July 1, 2009, the RTC rendered the assailed Decision[13] which decreed thus:

WHEREFORE, PREMISES CONSIDERED, the assailed Decision dated December 8, 2008 is AFFIRMED, with MODIFICATION, reducing the monthly rental to P2,000.00 for the use and enjoyment of the lot in question starting May 2008 until defendants-appellants vacate the same.

SO ORDERED.

Petitioners seasonably moved for the reconsideration thereto raising almost the same arguments contained in their affirmative defenses and counterclaim but the same was likewise denied by the RTC on October 5, 2009.[14]

Hence, the instant petition.

The Issues

I.

THAT THE COURT A QUO SERIOUSLY ERRED IN RULING AND AFFIRMING THAT THE PLAINTIFF-APPELLEE HAS A BETTER RIGHT TO POSSESS AND USE THE SUBJECT PROPERTY CONSIDERING THAT THE SAID PROPERTY IS A ROAD AND PART OF THE PROPERTIES INVOLVED AND ITS VERY EXISTENCE AS SUCH IS AN APPARENT SIGN THAT, UNDER ARTICLE 624 OF THE CIVIL CODE, SERVES AS A TITLE THAT THE EASEMENT MAY CONTINUE ACTIVELY AND PASSIVELY DESPITE ITS OWN FINDINGS THAT THERE IS EVIDENCE TO SHOW THAT INDEED THE SUBJECT PROPERTY IS A ROAD.

II.

THAT THE COURT A QUO SERIOUSLY ERRED IN RULING AND AFFIRMING THE MTCC'S FINDINGS THAT THE SUBJECT PROPERTY IS RESIDENTIAL IN NATURE WHEN CLEAR EVIDENCE HAS BEEN SHOWN THAT THE PLAINTIFF-APPELLEE HAS MADE NUMEROUS PRIOR ADMISSIONS THAT THE SAME IS A ROAD LOT.

III.

THAT THE COURT A QUO SERIOUSLY ERRED IN AFFIRMING THE MTCC'S DECISION RELYING UPON THE ALLEGEDLY SUBDIVIDED TAX DECLARATIONS SUPPOSEDLY COVERING THE SUBJECT PROPERTY WHEN THERE IS NO SHOWING OF ANY SUCH SUBDIVISION OF TRANSFER CERTIFICATE OF TITLE NO. 326 THAT ACTUAL PROPERTY COVERED THEREBY AND CONSIDERING FURTHER THAT THE SUBDIVISION AND AMENDMENT OF THE SAID TAX DECLARATION WAS APPARENTLY DONE UNILATERALLY AND WITHOUT THE CONSENT OF THE DEFENDANTS-APPELLANTS WHO, WITHOUT DUE PROCESS OF LAW, ARE BEING DEPRIVED OF THEIR RIGHT TO USE THE SAID ROAD, A RIGHT ESTABLISHED BY THE ORIGINAL OWNERS OF THE INVOLVED PROPERTIES.

IV.

THAT THE COURT A QUO SERIOUSLY ERRED IN AFFIRMING THE MTCC'S RULING THAT THE EXISTENCE OF ANOTHER ROAD ABUTTING THE DEFENDANTS-APPELLANTS' PROPERTY NEGATES THEIR RIGHT AND ENTITLEMENT TO USE THE SUBJECT PROPERTY AS A ROAD WHEN THESE ROADS WERE ESTABLISHED BY THE ORIGINAL OWNERS OF THE INVOLVED PROPERTIES AND IT IS NOT THE DEFENDANTS-APPELLANTS WHO ARE SEEKING THE ESTABLISHMENT OF A ROAD RIGHT OF WAY.

V.

THAT THE COURT A QUO SERIOUSLY ERRED IN EFFECTIVELY AFFIRMING THE MTCC'S RULING THAT AN ACTION FOR EJECTMENT IS AN APPLICABLE REMEDY IN THIS CASE IN VIEW OF THE FACT THAT THE DEFENDANTS-APPELLANTS DO NOT OCCUPY THE SAID PROPERTY BUT ONLY USE IT AS A ROAD INTO AND OUT OF THEIR PROPERTY.

The Court's Ruling

The petition is bereft of merit.

At the outset, it should be emphasized that this is mainly an action for recovery of possession of a real property filed by respondent as an heir of the registered owners and as a co-owner of the property under litigation against petitioners who are the adjacent lot owners of the subject 210-square meter lot and who are allegedly possessing

the said lot to the exclusion of respondent. While petitioners raised as a defense the nature of the subject lot asserting that it is a road right-of-way, yet, it should be emphasized that the present case is not an easement case or for the establishment of one.

Considering that all the issues raised by petitioners are interrelated, we will discuss them jointly. In sum, the focal issue in this case is whether or not the court a quo erred in affirming the decision of the MTCC finding respondent to have a better right of possession over the subject 210-square meter lot and in ordering petitioners to vacate the lot and to return the possession thereof to respondent.

We answer in the negative.

In this case, petitioners assert that the subject 210-square meter lot is a road lot and that the court a quo erred in affirming the decision of the MTCC ordering them to vacate the lot and to return the possession thereof to respondent. They argue that the subject lot is just a portion of the 2,569 square meter lot covered by TCT No. 326 which is a very long stretch of land about six (6) meters wide beginning at the edge of the national highway all the way near to the beach known as Lizada Drive and used by the people in the area to pass through and gain access to the national highway. In fact, petitioners argue that the tax declarations covering the subject property described it as a road and even the title of their land adjoining the subject property described it as a road. As such, the apparent sign that the subject lot is indeed intended by the owners as a road will serve as their title to the right to use the same as a road.

Moreover, petitioners contend that the intention to use the subject lot as part of the road lot could be traced from respondent's predecessors-in-interests and respondent as a mere successor-in-interest of the subject lot has no right to deny them the use of the lot as a road and respondent has no right to exclude them from the use of the subject property which right respondent's predecessors-in-interests established. They argue that their property which is adjacent to the subject lot was previously owned by Prudencio Lizada, one of the original owners of TCT No. 326 and one of the predecessors-in-interests of respondent. When their property was acquired from Prudencio Lizada, the subject lot was already an established easement of right-of-way. Hence, under Article 624 of the Civil Code, they were given the right as the subsequent owners to utilize an easement established by the original owners. Likewise, none of the grounds for the extinguishment of easement as provided in Article 631 of the Civil Code exist. Thus, an already established easement of road right-of-way must continue to exist in favor of the subsequent owners of the benefited properties and the fact that another road abutting their property exists is not a ground to extinguish the easement of road right-of-way already established by respondent's predecessors-in-interests. Petitioners likewise assert that they are not trying to claim or demand a road right-of-way but instead, they are seeking to defend their title to the road right-of-way established by the original owner of their property and one of the registered owners of TCT No. 326.

Finally, petitioners contend that respondent availed of the wrong remedy when she filed a case for recovery of possession of the subject lot because such action presupposes that they are occupying and detaining the possession of the subject lot and they refused to return it to respondent. They argue that such is not the case because they did not occupy or detain the possession of the subject lot. At most, their possession is merely intermittent as they use it only as a road from their house to the national highway and certainly, their use of the subject lot as a road cannot qualify as the occupation or "detainer" as understood in the unlawful detainer case. While there was a prior mandamus case filed by respondent and her relatives against them in order to cause the removal of the gate and the fence on the subject property and which was originally built by their predecessors-in-interests and subsequently improved by them, yet, the same were already removed by respondent and her relatives. The gate and the fence on the subject lot were no longer there and the subject property is free and clear from any permanent occupation by them. It is thus clear that the purpose of respondent in filing the instant case is not to remove them

from the subject lot but rather to prevent them from using it. This, however, does not constitute a cause of action for unlawful detainer.

We are not persuaded. We find petitioners' contentions untenable.

In instituting the instant case, respondent asserts that she has a better right to possess the subject lot based on her claim of ownership as an heir of the original registered owners. Petitioners, on the other hand, allege that they have a better right to possess the lot because they have already acquired the right of possession over it, which is akin to a title, for the use of the lot as a road for so long a time. They argue that the subject lot has already been established by respondent's predecessors-in-interests as an easement of right-of-way going to the national highway and as such, they should not be denied the right to use the same as their ingress and egress. While petitioners did not deny the ownership of respondent, yet, they assert that respondent should respect what has been established by her predecessors-in-interests and because the lot is intended by the original owners to be an easement of right-of-way. Respondent, nonetheless, argues that the possession of petitioners over the subject lot was merely tolerated by her and her co-owners. Hence, it is understood that petitioners should return the lot upon demand by its owners.

It should be emphasized however that the present controversy is neither a suit for the establishment of an easement of right-of-way under Articles 649 to 656 of the Civil Code nor for the conferment of an easement in favor of petitioners. The present case is an ejectment proceeding for the determination of who between the parties had the better right of possession of the lot under litigation. Accordingly, it is settled that ejectment proceedings are summary proceedings intended to provide an expeditious means of protecting actual possession or right to possession of property. However, its being summary poses a limitation on the nature of the issues to be determined and fully ventilated. At the heart of the present ejectment suit is the issue of who is entitled to the physical possession of the 210-square meter lot under litigation or the possession de facto.

In determining who between the parties has a better right to possess the property, we are therefore asked to resolve a factual issue, involving as it does the weighing and evaluation of the evidence presented by the parties in the courts below. However, it is an equally settled doctrine that courts in ejectment cases may determine questions of ownership whenever necessary to decide the question of possession though the determination is regarded merely as provisional.[15]

Essentially, petitioners did not deny the ownership of respondent's predecessors-in-interests over the lot and the fact that respondent is indeed an heir of the original owners. However, petitioners assert that they should not be denied the use of the lot because it is an established road lot. It should be noted however that when respondent filed the ejectment suit, she was giving notice to petitioners of her claim of her right to possess the lot which is an elemental attribute of ownership thereof. She claims that petitioners' possession thereto is merely tolerated.

Undoubtedly, an ejectment complaint based on possession by tolerance of the owner, like the respondent's complaint, is a species of unlawful detainer cases. There is therefore no merit to petitioners' contention that respondent availed of the wrong remedy in asserting her claim to better right of possession over the subject lot because respondent as an heir of the original owners of the subject lot and as a co-owner thereof, has the better right to demand the return of the private property from the actual possessor thereof and whose possession is merely tolerated.

One of the three kinds of action for the recovery of possession of real property is "accion interdical, or an ejectment proceeding which may be either that for forcible entry (detentacion) or unlawful detainer (desahucio), which is a summary action for the physical possession where the dispossession has not lasted for more than one year, and should be brought in the proper inferior court. In an unlawful detainer (desahucio) case, one unlawfully

withholds possession of the subject property after the expiration or termination of the right to possess. Here, the issue of rightful possession is the one decisive; for in such action, the defendant is the party in actual possession and the plaintiff's cause of action is the termination of the defendant's right to continue in possession.[16]

In *Heirs of Anacleto B. Nieto v. Municipality of Meycauayan, Bulacan*,[17] the Supreme Court has consistently held that those who occupy the land of another at the latter's tolerance or permission, without any contract between them, are necessarily bound by an implied promise that the occupants will vacate the property upon demand. The status of the possessor is analogous to that of a lessee or tenant whose term of lease has expired but whose occupancy continues by tolerance of the owner. In such case, the unlawful deprivation or withholding of possession is to be counted from the date of the demand to vacate. Upon the refusal to vacate the property, the owner's cause of action accrues.

Likewise, in *Antioquia Development Corporation, et al. v. Rabacal, et al.*,[18] it was emphasized that if the defendant's prior physical possession was merely based on the supposed permission given by the predecessor-in-interest of plaintiff and apparently by the plaintiff as the subsequent owner, it does not automatically entitle defendant to continue in said possession and it does not give defendant a better right to the property as it is a well-settled rule that persons who occupy the land of another at the latter's tolerance or permission, without any contract between them is bound by an implied promise that they will vacate the same upon demand, failing which a summary action for ejectment is the proper remedy against them.

Verily, in this case, there is no doubt that respondent has the better right to possession over the 210-square meter lot under litigation. Accordingly, petitioners are bound by their implied promise to return the possession and to vacate the lot upon demand of respondent considering that the use of petitioners of the subject lot is merely tolerated by respondent and her co-owners. Petitioners could not deny their possession over the subject lot because the fact that they are using it as a parking area, flower garden and even as an easement of right-of-way only shows that they are indeed exercising acts of possessory character and their acts could even be considered as acts of dominion over the subject lot which are merely tolerated by the owners of the lot. In fact, as admitted by petitioners themselves, a mandamus case was previously filed against them by respondent and her relatives in order to remove the fence that was built on the subject lot. While petitioners asserted that the said fence was already there on the subject lot when they acquired their property adjacent thereto and the fence was actually built by respondent's predecessor-in-interest, yet, petitioners likewise admitted that they nonetheless kept the fence and even improved it after they acquired their property. Moreso, while petitioners contended that the fence was already removed pursuant to the mandamus case, this fact only shows that petitioners had indeed exercised act of exclusive possession over the subject lot to the prejudice of the real owners of the subject lot. Consequently, although the fence is now removed, yet, it could not be denied that petitioners are still exercising acts of possessory character over the subject lot as they continue to use it as their parking area, flower garden and for any other purposes sans the fence.

Corollarily, the fact that petitioners are raising the defense that the subject lot is actually an easement of right-of-way is of no moment. To reiterate, the present case is not an easement case or for the establishment of an easement of right-of-way over the subject lot. More importantly, the nature of the lot under litigation, whether it is road lot or not, is immaterial to the determination of the right to better possession of the said lot. Moreso, even if the subject lot is used as a road, it should be emphasized that it is a private road registered in the name of respondent's predecessors-in-interests and not a public road which is coupled with public interest.

There is likewise no merit to petitioners' contention that with their constant use of the subject lot as an ingress and egress over a certain period of time, they are deemed to have acquired title over the use of such lot; hence, they assert that respondent should not be allowed to deprive them of the use thereof. In the case of *Bogo-Medellin*

Milling Co. v. Court of Appeals,[19] the Supreme Court explained when title over the use of a land is acquired, thus:

But when is a party deemed to acquire title over the use of such land (that is, title over the easement of right of way)? In at least two cases, we held that if: (a) it had subsequently entered into a contractual right of way with the heirs for the continued use of the land under the principles of voluntary easements or (b) it had filed a case against the heirs for conferment on it of a legal easement of right of way under Article 629 of the Civil Code, then title over the use of the land is deemed to exist. The conferment of a legal easement of right of way under Article 629 is subject to proof of the following:

- (1) it is surrounded by other immovables and has no adequate outlet to a public highway;
- (2) payment of proper indemnity;
- (3) the isolation is not the result of its own acts; and
- (4) the right of way claimed is at the point least prejudicial to the servient estate, and, insofar as consistent with this rule, the distance from the dominant estate to the highway is the shortest.

None of the above options to acquire title over the railroad right of way was ever pursued by petitioner despite the fact that simple resourcefulness demanded such initiative, considering the importance of the railway tracks to its business. No doubt, it is unlawfully occupying and using the subject strip of land as a railroad right of way without valid title yet it refuses to vacate it even after demand of the heirs. Furthermore, it tenaciously insists on ownership thereof despite a clear showing to the contrary. (*Italics added.*)

In the present case, none of the above options to acquire title over the use of the subject lot is present. While petitioners use the subject lot as an easement of right-of-way, yet, there is no denying that this is not the only and adequate outlet from their residence going to the national highway. It is important to note that petitioners' road right-of-way was expressly and explicitly provided in their certificate of title, TCT No. T-288274, covering their property. It was expressly stated therein that their road right-of way going to the national highway is a four (4) meter road across Lot 552-B-2 from Lot 552-B-1 to Lot 552-G. If indeed Prudencio Lizada, the original owner of their property and the predecessor-in-interest of respondent, has intended that the subject 210-square meter lot known as Lot No. 552-G-1 would be the road right-of-way, Prudencio Lizada should have explicitly indicated the same in his title. Unfortunately, it was not indicated therein that the subject lot would serve as an easement of right-of way and instead, another road lot was provided and stated in the title. Hence, it could not be said that petitioners are deprived from the use thereof for they are not without any road right-of-way going to the national highway.

Thus, we sustain the finding of the trial court that the respondent has the better right to possess the subject property.

This notwithstanding, we are inclined to delete the modified award of monthly rentals in the amount of P2,000.00 in favor of respondent for lack of evidence to sustain the same. It should be noted that the only damages that could be recovered in an ejectment case are those which the plaintiff could have sustained as a mere possessor, or those caused by the loss of the use and occupation of the property, and not the damages which he may have suffered but which have no direct relation to his loss of material possession.[20]

In this case, there is no evidence to show that the amount demanded by respondent as rentals could be considered as compensation for petitioners' use and occupation of the property. Respondent, as the plaintiff in the complaint before the MTCC, had the burden to adduce evidence to prove the fair rental value or reasonable compensation of the property under litigation,[21] but she failed to discharge this burden. In fact, a perusal of the records available

before us shows that except for the bare allegation of respondent that she was deprived of the reasonable use and enjoyment of the lot, no other evidence was presented by respondent to prove that she is entitled to the compensation for the use of the subject lot by petitioners. It should be stressed also that the subject lot was used by petitioners as their ingress and egress and there was no proof that at the time of the filing of the complaint a permanent or semi-permanent structures were built by petitioners on the land. The complaint merely alleged that petitioners used the lot as their parking area, flower garden and others. Hence, for lack of evidence, the amount awarded as the fair rental of the land should be deleted.

WHEREFORE, premises considered, the instant petition is hereby DENIED. The assailed July 1, 2009 Decision of the Regional Trial Court of Davao City, Branch 16, is hereby AFFIRMED with the MODIFICATION that the award of Two Thousand Pesos (P2,000.00) as monthly rental is deleted.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Camello, J., Ch., and Inting, JJ., concur.

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- [1] Annex “A” to the Petition, Rollo, pp. 31-35.
- [2] Penned by Hon. Emmanuel C. Carpio, Presiding Judge.
- [3] Annex “K” to the Petition, Id., pp. 155-159.
- [4] Penned by Hon. Antonina B. Escovilla, Presiding Judge.
- [5] Annex “B” to the Petition, Order dated October 5, 2009, Id., p. 36.
- [6] Annex “D” to the Petition, Id., pp. 44-46.
- [7] Id., p. 47.
- [8] Id., p. 117.
- [9] Demand Letter, Id., p. 52.
- [10] Certificate to File Action, Id., p. 54.
- [11] Annex “E” to the Petition, Id., pp. 65-68.
- [12] Supra, note no. 3.
- [13] Supra, note no. 1.
- [14] Supra, note no. 5.
- [15] *Malabanan v. Rural Bank of Cabuyao, Inc.*, G.R. No. 163495, May 8, 2009.
- [16] *Cruz v. Court of Appeals*, G.R. No.139442, December 6, 2006.
- [17] G.R. No. 150654, December 13, 2007.

[18] G.R. No. 148843, September 5, 2012.

[19] G.R. No. 124699, July 31, 2003.

[20] Dumo v. Espinas, G.R. No. 141962, G.R. No. 25, 2006.

[21] Josefa v. San Buenaventura, G.R. No. 163429, 3 March 2006.

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