

**THE CONSOLIDATED BANK AND TRUST CORPORATION
(SOLIDBANK), PETITIONER, VS. DEL MONTE MOTOR WORKS, INC.,
NARCISO G. MORALES, AND SPOUSE, RESPONDENTS.**

G.R. No. 143338. July 29, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a petition for review on certiorari of the Decision[2] of the Court of Appeals in CA-G.R. CV No. 16886 entitled, "The Consolidated Bank & Trust Corporation (SOLIDBANK) v. Del Monte Motor Works, Inc., Narciso O. Morales and Spouse" promulgated on 25 November 1999 and of the Resolution of the appellate court dated 11 May 2000 denying petitioner's motion for reconsideration. Said decision and resolution affirmed the order dated 28 December 1987 of the Regional Trial Court (RTC), Branch 27, Manila.

The facts of the case are as follows:

On 13 June 1984, petitioner filed before the RTC of Manila a complaint[3] for recovery of sum of money against respondents, impleading the spouse of respondent Narciso O. Morales (respondent Morales) in order to bind their conjugal partnership of gains. Petitioner, a domestic banking and trust corporation, alleges therein that on 23 April 1982, it extended in favor of respondents a loan in the amount of One Million Pesos (P1,000,000.00) as evidenced by a promissory note executed by respondents on the same date. Under the promissory note, respondents Del Monte Motor Works, Inc. (respondent corporation) and Morales bound themselves jointly and severally to pay petitioner the full amount of the loan through twenty-five monthly installments of P40,000.00 a month with interest pegged at 23% per annum. The note was to be paid in full by 23 May 1984. As respondents defaulted on their monthly installments, the full amount of the loan became due and demandable pursuant to the terms of the promissory note. Petitioner likewise alleges that it made oral and written demands upon respondents to settle their obligation but notwithstanding these demands, respondents still failed to pay their indebtedness which, as of 09 March 1984, stood at P1,332,474.55. Petitioner attached to its complaint as Annexes "A," "B," and "C," respectively, a photocopy of the promissory note supposedly executed by respondents, a copy of the demand letter it sent respondents dated 20 January 1983, and statement of account pertaining to respondents' loan.

On 31 October 1984, petitioner filed an Ex-Parte Motion to Declare the Defendants in Default which was opposed by the defendants upon the ground that they were never served with copies of the summons and of petitioner's complaint.

On 23 November 1984, respondent corporation filed before the trial court a manifestation attaching thereto its answer to petitioner's complaint which states the following:

2- That it denies generally and specifically the allegations contained in paragraphs 3, 4, 5, 6, 7 and 8 thereof for lack of knowledge and information sufficient to form a belief as to the truth of the matters therein alleged, the truth being those alleged in the Special and Affirmative Defenses hereinbelow contained;

3- ANSWERING FURTHER, and by way of a first special and affirmative defense, defendant herein states that the promissory note in question is void for want of valid consideration and/or there was no valuable consideration involved as defendant herein did not receive any consideration at all;

4- ANSWERING FURTHER, and by way of a second special affirmative defense, defendant herein alleges that no demand has ever been sent to nor received by herein defendant and if ever demands were made, denies any liability as averred therein.

5- ANSWERING FURTHER, and by way of a third special and affirmative defense, defendant herein avers that the complaint states no cause of action and has no basis either in fact or in law; ...

VERIFICATION

I, JEANNETTE D. TOLENTINO, of legal age, after having been duly sworn to in accordance with law, depose and state:

That I am the Controller of Del Monte Motor Works, Inc., one of the defendants in this case.

That for and in behalf of the defendant corporation, I caused the preparation of the above-narrated answer.

That I have read the contents thereof and they are true of my own knowledge.

(SGD) JEANNETTE D. TOLENTINO[4]

On 06 December 1984, respondent Morales filed his manifestation together with his answer wherein he likewise renounced any liability on the promissory note, thus:

1. He ADMIT[S] paragraphs 1, 2, and 3 of the complaint with a qualification in paragraph 3 thereof that he has long been separated from his wife and the system governing their property relations is that of complete separation of property and not that of conjugal partnership of gain[s];

2. He [DENIES], generally and specifically, the allegations contained in paragraphs 4, 5, 6, 7, and 8 thereof, for lack of knowledge and information sufficient to form a belief and as to the truth of the matter therein averred, the truth being those alleged in the Special And Affirmative Defenses hereinbelow pleaded;

...

SPECIAL AND AFFIRMATIVE DEFENSES

4. He has never signed the promissory note attached to the complaint in his personal and/or individual capacity as such;

5. That the said promissory note is ineffective, unenforceable and void for lack of valid consideration;

6. That even admitting, argumenti gratia, the validity and execution of the questioned promissory note, still, defendant herein cannot be bound personally and individually to the said obligations as banking procedures requires, it being a standard operating procedure of all known banking institution, that to hold a borrower jointly and severally liable in his official as well as personal capacity, the borrower must sign a Suretyship Agreement or at least, a continuing guaranty with that of the corporation he represent(s) but which in this case is wanting;

7. That transaction/obligation in question did not, in any way, redound/inure to the benefit of the conjugal partnership of gain, as there is no conjugal partnership of gain to speak with, defendant having long been separated from his wife and their property relation is governed by the system of complete separation of property, and more importantly, he has never signed the said promissory note in his personal and individual capacity as such;

VERIFICATION

That I, NARCISO MORALES, after having been duly sworn to in accordance with law, hereby depose and declare that:

I am one of the named defendant[s] in the above-entitled case;

I have cause[d] the preparation of the foregoing Answer upon facts and figures supplied by me to my retained counsel; have read each and every allegations contained therein and hereby certify that the same are true and correct of my own knowledge and information.

(SGD) NARCISO MORALES

Affiant[5]

On 26 December 1984, the trial court denied petitioner's motion to declare respondents in default and admitted their respective answers.[6]

During the trial on the merits of this case, petitioner presented as its sole witness, Liberato A. Lavarino (Lavarino), then the manager of its Collection Department. Substantially, Lavarino stated that respondents obtained the loan, subject of this case, from petitioner and due to respondents' failure to pay a single monthly installment on this loan, petitioner was constrained to send a demand letter to respondents; that as a result of this demand letter, Jeannette Tolentino (Tolentino), respondent corporation's controller, wrote a letter to petitioner requesting for some consideration because of the unfavorable business atmosphere then buffeting their business operation; that Tolentino enclosed to said letter a check with a face value of P220,020.00 to be discounted by petitioner with the proceeds being applied as partial payment to their company's obligation to petitioner; that after receipt of this partial payment, respondents' obligation again became stagnant prompting petitioner to serve respondents with another demand letter which, unfortunately, was unheeded by respondents. Lavarino also identified the following exhibits for petitioner: photocopy of the duplicate original of the promissory note attached to the complaint as Exhibit "A;"[7] petitioner's 20 January 1983 demand letter marked as Exhibit "B;"[8] Tolentino's letter to petitioner dated 10 February 1983 and marked as Exhibit "C;"[9] and the 09 March 1984 statement of account sent to respondents marked as Exhibit "D." [10]

On 26 September 1985, petitioner made its formal offer of evidence. However, as the original copy of Exhibit "A" could no longer be found, petitioner instead sought the admission of the duplicate original of the promissory note which was identified and marked as Exhibit "E."

The trial court initially admitted into evidence Exhibit "E" and granted respondents' motion that they be allowed to amend their respective answers to conform with this new evidence.[11]

On 30 September 1985, respondent corporation filed a manifestation and motion for reconsideration[12] of the trial court's order admitting into evidence petitioner's Exhibit "E." Respondent corporation claims that Exhibit "E" should not have been admitted as it was immaterial, irrelevant, was not properly identified and hearsay evidence. Respondent corporation insists that Exhibit "E" was not properly identified by Lavarino who testified that he had nothing to do in the preparation and execution of petitioner's exhibits, one of which was Exhibit "E." Further, as there were markings in Exhibit "A" which were not contained in Exhibit "E," the latter could not possibly be considered an original copy of Exhibit "A." Lastly, respondent corporation claims that the exhibit in question had no bearing on the complaint as Lavarino admitted that Exhibit "E" was not the original of Exhibit "A" which was the foundation of the complaint and upon which respondent corporation based its own answer.

Respondent Morales similarly filed a manifestation with motion to reconsider order admitting as evidence Exhibit "E"[13] which, other than insisting that the due execution and genuineness of the promissory note were not

established as far as he was concerned, essentially raised the same arguments contained in respondent corporation's manifestation with motion for reconsideration referred to above.

On 06 December 1985, the trial court granted respondents' motions for reconsideration.[14] Petitioner moved for the reconsideration of this order which was denied by the court a quo on 20 December 1985.[15]

On 26 December 1985, respondents separately filed their motions to dismiss on the similar ground that with the exclusion of Exhibits "A" and "E," petitioner no longer possessed any proof of respondents' alleged indebtedness.[16]

On 08 April 1986, petitioner filed a motion[17] praying that the presiding judge, Judge Ricardo D. Diaz, of the court a quo inhibit himself from this case maintaining that the latter rushed into resolving its motion for reconsideration of the trial court's order of 06 December 1985 thereby depriving it the opportunity of presenting proof that the original of Exhibit "A" was delivered to respondents as early as 02 April 1983. Such haste on the part of the presiding judge, according to petitioner, cast doubt on his objectivity and fairness. This motion to inhibit was denied by the trial court on 06 August 1987.[18]

In an order dated 28 December 1987,[19] the case before the trial court was dismissed, the dispositive portion of which reads:

WHEREFORE, the instant case against defendants Del Monte Motor Works, Inc. and Narciso O. Morales and spouse, is hereby DISMISSED, with costs against the plaintiff.

The trial court's finding was affirmed by the Court of Appeals in the assailed decision now before us. The dispositive portion of the appellate court's decision reads:

WHEREFORE, PREMISES CONSIDERED, the decision of the Regional Trial Court, Manila, Branch 27, dated December 28, 1987 dismissing plaintiff-appellant['s] complaint is hereby AFFIRMED. Cost against the plaintiff-appellant.[20]

Petitioner thereafter filed a motion for reconsideration dated 14 December 1999 which was denied for lack of merit in a resolution of the Court of Appeals promulgated on 11 May 2000.[21]

Aggrieved by the appellate court's ruling, petitioner now seeks redress from this Court imputing the following errors on the Court of Appeals:

I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT FOUND THAT PRIVATE RESPONDENTS DENIED THE MATERIAL ALLEGATIONS OF PETITIONER SOLIDBANK'S COMPLAINT, DESPITE THE PRESENCE OF INDUBITABLE FACTS CLEARLY POINTING TO THE FACT THAT SAID PRIVATE RESPONDENTS ADMITTED THE GENUINENESS AND DUE EXECUTION OF THE SUBJECT PROMISSORY NOTE.

II

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT UPHELD THE EXCLUSION OF EXHIBIT 'E', THE SECOND ORIGINAL OF THE PROMISSORY NOTE, DESPITE THE FACT THAT THE ORIGINAL OF EXHIBIT 'A' (XEROX COPY OF THE DUPLICATE ORIGINAL OF THE PROMISSORY NOTE) WAS ACTUALLY IN THE POSSESSION OF PRIVATE RESPONDENTS, THUS WARRANTING THE ADMISSION OF SECONDARY EVIDENCE.

III

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT THE TRIAL JUDGE SHOULD HAVE INHIBITED HIMSELF FROM TAKING COGNIZANCE OF AND FROM TRYING AND DECIDING THE INSTANT CASE CONSIDERING HIS PERCEIVED AND MANIFEST BIAS AND PARTIALITY IN FAVOR OF THE PRIVATE RESPONDENTS TO THE GRAVE PREJUDICE OF PETITIONER SOLIDBANK.[22]

The petition is meritorious.

In resolving the case against petitioner, the appellate court held that contrary to petitioner's stance, respondents were able to generally and specifically deny under oath the genuineness and due execution of the promissory note, thus:

There can be no dispute to the fact that the allegations in the answer (Record, p. 20, 26-27), of both defendants, they denied generally and specifically under oath the genuineness and due execution of the promissory note and by way of special and affirmative defenses herein states that he (MORALES) never signed the promissory note attached to the complaint (Exh. A) in his personal and/or individual capacity. Moreover, what appears in the record (Record, p. 20) was an admission of paragraphs 1 & 2 but they deny generally and specifically the rest of the allegations. It would be considered that there is a sufficient compliance of the requirement of the law for specific denial.[23]

We hold otherwise.

The pertinent portion of the Rules of Court on the matter provides:

SEC. 8. How to contest such documents.—When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them and sets forth what he claims to be the facts; but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused.[24]

In the case of *Permanent Savings and Loan Bank v. Mariano Velarde*,[25] this Court held that -

. . . Respondent also denied any liability on the promissory note as he allegedly did not receive the amount stated therein, and the loan documents do not express the true intention of the parties. Respondent reiterated these allegations in his "denial under oath," stating that the "promissory note sued upon, assuming that it exists and bears the genuine signature of herein defendant, the same does not bind him and that it did not truly express the real intention of the parties as stated in the defenses...

Respondent's denials do not constitute an effective specific denial as contemplated by law. In the early case of *Songco vs. Sellner*,[26] the Court expounded on how to deny the genuineness and due execution of an actionable document, viz.:

. . . This means that the defendant must declare under oath that he did not sign the document or that it is otherwise false or fabricated. Neither does the statement of the answer to the effect that the instrument was procured by fraudulent representation raise any issue as to its genuineness or due execution. On the contrary such a plea is an admission both of the genuineness and due execution thereof, since it seeks to avoid the instrument upon a ground not affecting either.[27]

In this case, both the court a quo and the Court of Appeals erred in ruling that respondents were able to specifically deny the allegations in petitioner's complaint in the manner specifically required by the rules. In effect, respondents had, to all intents and purposes, admitted the genuineness and due execution of the subject promissory note and recognized their obligation to petitioner.

The appellate court likewise sustained the ruling of the trial court that the "best evidence rule or primary evidence must be applied as the purpose of the proof is to establish the terms of the writing - meaning the alleged promissory note as it is the basis of the recovery of the money allegedly loaned to the defendants (respondents herein)."[28]

The "best evidence rule" is encapsulated in Rule 130, Section 3, of the Revised Rules of Civil Procedure which provides:

Sec. 3. Original document must be produced; exceptions.—When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

- (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
- (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
- (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
- (d) When the original is a public record in the custody of a public officer or is recorded in a public office.

The "best evidence rule," according to Professor Thayer, first appeared in the year 1699-1700 when in one case involving a goldsmith, Holt, C. J., was quoted as stating that they should take into consideration the usages of trade and that "the best proof that the nature of the thing will afford is only required." [29] Over the years, the phrase was used to describe rules which were already existing such as the rule that the terms of a document must be proved by the production of the document itself, in preference to evidence about the document; it was also utilized to designate the hearsay rule or the rule excluding assertions made out of court and not subject to the rigors of cross-examination; and the phrase was likewise used to designate the group of rules by which testimony of particular classes of witnesses was preferred to that of others. [30]

According to McCormick, an authority on the rules of evidence, "the only actual rule that the 'best evidence' phrase denotes today is the rule requiring the production of the original writing" [31] the rationale being:

(1) that precision in presenting to the court the exact words of the writing is of more than average importance, particularly as respects operative or dispositive instruments, such as deeds, wills and contracts, since a slight variation in words may mean a great difference in rights, (2) that there is a substantial hazard of inaccuracy in the human process of making a copy by handwriting or typewriting, and (3) as respects oral testimony purporting to give from memory the terms of a writing, there is a special risk of error, greater than in the case of attempts at describing other situations generally. In the light of these dangers of mistransmission, accompanying the use of written copies or of recollection, largely avoided through proving the terms by presenting the writing itself, the preference for the original writing is justified. [32]

Bearing in mind that the risk of mistransmission of the contents of a writing is the justification for the "best evidence rule," we declare that this rule finds no application to this case. It should be noted that respondents never disputed the terms and conditions of the promissory note thus leaving us to conclude that as far as the parties herein are concerned, the wording or content of said note is clear enough and leaves no room for disagreement. In their responsive pleadings, respondents' principal defense rests on the alleged lack of consideration of the promissory note. In addition, respondent Morales also claims that he did not sign the note in his personal capacity. These contentions clearly do not question the "precise wording" [33] of the promissory note which should have

paved the way for the application of the "best evidence rule." It was, therefore, an error for the Court of Appeals to sustain the decision of the trial court on this point.

Besides, the "best evidence rule" as stated in our Revised Rules of Civil Procedure is not absolute. As quoted earlier, the rule accepts of exceptions one of which is when the original of the subject document is in the possession of the adverse party. As pointed out by petitioner in its motion to inhibit, had it been given the opportunity by the court a quo, it would have sufficiently established that the original of Exhibit "A" was in the possession of respondents which would have called into application one of the exceptions to the "best evidence rule."

Significantly, and as discussed earlier, respondents failed to deny specifically the execution of the promissory note. This being the case, there was no need for petitioner to present the original of the promissory note in question. Their judicial admission with respect to the genuineness and execution of the promissory note sufficiently established their liability to petitioner regardless of the fact that petitioner failed to present the original of said note.[34]

Indeed, when the defendant fails to deny specifically and under oath the due execution and genuineness of a document copied in a complaint, the plaintiff need not prove that fact as it is considered admitted by the defendant.[35] In the case of *Asia Banking Corporation v. Walter E. Olsen & Co.*,[36] this Court held that -

Another error assigned by the appellant is the fact that the lower court took into consideration the documents attached to the complaint as a part thereof, without having been expressly introduced in evidence. This was no error. In the answer of the defendants there was no denial under oath of the authenticity of these documents. Under Section 103 of the Code of Civil Procedure, the authenticity and due execution of these documents must, in that case, be deemed admitted. The effect of this is to relieve the plaintiff from the duty of expressly presenting such documents as evidence. The court, for the proper decision of the case, may and should consider, without the introduction of evidence, the facts admitted by the parties.[37]

Anent petitioner's allegation that the presiding judge of the court a quo should have inhibited himself from this case, we resolve this issue against petitioner.

In order for this Court to sustain a charge of partiality and prejudice brought against a judge, there must be convincing proof to show that he or she is, indeed, biased and partial. Bare allegations are not enough. Bias and prejudice are serious charges which cannot be presumed particularly if weighed against a judge's sacred obligation under his oath of office to administer justice without respect to person and do equal right to the poor and the rich.[38] There must be a showing of bias and prejudice stemming from an extrajudicial source resulting in an opinion in the merits on some basis other than what the judge learned from his participation in the case.[39]

In this case, as petitioner failed to proffer any evidence indicating that Judge Diaz was guilty of bias and prejudice, we affirm the Court of Appeals' holding that there was no cogent reason for him to disqualify himself from this case.

Finally, Rule 33, Section 1, of the Revised Rules of Civil Procedure states the rule on the effect of judgment on demurrer to evidence. It reads:

SECTION 1. Demurrer to evidence.—After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence.

A demurrer to evidence abbreviates judicial proceedings, it being an instrument for the expeditious termination of

an action. Caution, however, must be exercised by the party seeking the dismissal of a case upon this ground as under the rules, if the movant's plea for the dismissal on demurrer to evidence is granted and the order of dismissal is reversed on appeal, he loses his right to adduce evidence. If the defendant's motion for judgment on demurrer to evidence is granted and the order is subsequently reversed on appeal, judgment is rendered in favor of the adverse party because the movant loses his right to present evidence.[40] The reviewing court cannot remand the case for further proceedings; rather, it should render judgment on the basis of the evidence presented by the plaintiff.[41]

Under the promissory note executed by respondents in this case, they are obligated to petitioner in the amount of One Million Pesos, this being the amount of loan they obtained on 23 April 1982. In addition, they also bound themselves to pay the 23% interest per annum on the loan; and a penalty charge of 3% per annum on the amount due until fully paid. Respondents likewise agreed to pay attorney's fees equivalent to 10% of the total amount due, but in no case less than P200.00, plus costs of suit with both these amounts bearing a 1% interest per month until paid. Costs against respondents.

WHEREFORE, premises considered, the Court of Appeals' decision dated 25 November 1999 as well as its Resolution of 11 May 2000, affirming the order of the Regional Trial Court, Manila, Branch 27, dated 28 December 1987, are hereby REVERSED and SET ASIDE. Respondents are ordered to pay One Million Pesos (P1,000,000.00) plus 23% interest per annum, penalty charge of 3% interest per annum, and 10% of the amount due as attorney's fees together with a 1% interest per month until fully paid. The sum of P220,020.00 which was the value of the postdated check given

by respondents to petitioner as partial payment should be deducted from the amount due from respondents.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] "Narciso O. Morales" in the Decision of the Court of Appeals.

[2] Penned by Associate Justice Mercedes Gozo-Dadole with Associate Justices Ramon A. Barcelona and Demetrio G. Demetria concurring; Rollo, pp. 9-26.

[3] Records, pp. 1-6.

[4] Records, pp. 20-21.

[5] Records, pp. 26-27.

[6] Records, p. 34.

[7] Records, p. 72.

[8] Records, p. 73.

[9] Records, p. 75.

[10] Records, p. 76.

[11] Records, p. 79.

[12] Records, pp. 80-83.

- [13] Records, pp. 84-90.
- [14] Records, p. 118.
- [15] Records, p. 148.
- [16] Records, pp. 150-165.
- [17] Records, pp. 195-200.
- [18] Records, pp. 233-238.
- [19] Records, pp. 244-252.
- [20] Rollo, p. 25.
- [21] Rollo, p. 28.
- [22] Rollo, p. 42.
- [23] Rollo, p. 18.
- [24] Rule 8, Section 8, Revised Rules of Civil Procedure.
- [25] G.R. No. 140608, 23 September 2004, 439 SCRA 1.
- [26] G.R. No. 11513, 04 December 1917, 37 Phil. 254.
- [27] Supra, note 25, pp. 8-9.
- [28] Records, p. 250.
- [29] IV Evidence in Trials at Common Law, John Henry Wigmore, p. 399 (1972 Ed.).
- [30] Id. at 400.
- [31] Handbook of the Law of Evidence, Charles T. McCormick, p. 409 (1954 Ed.).
- [32] Id. at 410.
- [33] Evidence, Edward W. Cleary, p. 416 (4[th] Ed.).
- [34] Supra, note 25 at 10; Hornales v. The National Labor Relations Commission, et al., G.R. No. 118943, 10 September 2001, 364 SCRA 778; SCC Chemicals Corporation v. The Honorable Court of Appeals, et al., G.R. No. 128538, 28 February 2001, 353 SCRA 70.
- [35] VII The Revised Rules of Court in the Philippines (Evidence), Vicente J. Francisco, p. 9 (1997 Ed.)
- [36] G.R. No. 24488, 28 December 1925, 48 Phil. 529.
- [37] Id. at 532.
- [38] People of the Philippines v. Court of Appeals, et al., G.R. No. 129120, 02 July 1999, 309 SCRA 705.
- [39] Soriano v. Angeles, G.R. No. 109920, 31 August 2000, 339 SCRA 366.
- [40] Quebral v. Court of Appeals, G.R. No. 101941, 25 January 1996, 252 SCRA 353.
- [41] Radiowealth Finance Company v. Del Rosario, G.R. No. 138739, 06 July 2000, 335 SCRA 288.

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