

SALVADOR A. FERNANDEZ, PETITIONER, VS. CRISTINA D. AMAGNA, RESPONDENT.

G.R. No. 152614. September 30, 2009

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

Before this Court is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure which seeks to set aside and annul the Decision[1] dated May 25, 2001 and the Resolution[2] dated March 14, 2002 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 46910.

The CA decision affirmed the decision[3] of the Regional Trial Court (RTC) of Manila, Branch 16, which ordered petitioner to vacate the premises owned by respondent and to pay the unpaid rentals thereon in Civil Case No. 97-85824.

The facts may be succinctly stated as follows:

On September 23, 1996, a complaint for unlawful detainer[4] was filed by respondent Cristina Amagna against petitioner Salvador Fernandez in the Metropolitan Trial Court (MeTC) of Manila, Branch 11, docketed as Civil Case No. 153177-CV. In her complaint, respondent, plaintiff in the trial court, alleged that she is a co-owner and administratrix of a property located at 1901-K Int. 34, Zamora St., Pandacan, Manila. The property is covered by OCT No. 7369 in the name of siblings Aurelio Restua (married to Clara Bautista) and Trinidad Restua (married to Felipe Dalmacio), with a total area of 3,271 square meters. Respondent, being the heir of Trinidad, owns in common with her brothers and sisters, one-half of the property. A portion of the property was leased by petitioner on a month-to-month basis at the rate of P1,300.00. In July 1995, petitioner failed to pay the monthly rentals, prompting respondent to send a demand letter dated April 11, 1996 to pay and vacate but petitioner refused. Respondent also alleged that she and her siblings needed the leased premises as they were also renting.

In his Answer,[5] petitioner averred that he had been renting the premises for over fifty (50) years and had, in fact, already constructed substantial improvements on the lot; that he was one of several lessees of the property represented by their association known as "Barangay 843 Neighborhood Association"; that the monthly rental was only P420.00 and not P1,300.00 as claimed by respondent; that respondent had been transacting business with him through the association and respondent acknowledged payments made through the said association; that there was no agreement with respondent regarding the period for the lease; that he was surprised to receive a demand letter from respondent because he was sure that he had no arrears; and that on May 15, 1997, he filed a Petition for Consignation before the MeTC, Manila, Branch 3 and deposited his arrears in rent computed at the rate of P420.00 per month.

On October 13, 1997, the MeTC, Manila rendered its decision in favor of respondent, the dispositive portion of which stated:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff [herein respondent] and against the

defendant [herein petitioner] ordering:

- The defendant and all persons claiming rights under him to immediately vacate the premises known as 1901-K Int. 34, Zamora St., Pandacan, Manila, and surrender its peaceful possession to the plaintiff;
- To remove and demolish the structure he built on the premises;
- To pay the plaintiff the sum of P1,300.00 monthly beginning July 1995 and every month thereafter until he shall have finally and actually vacated the subject premises;
- To pay the plaintiff the sum of P5,000.00 for and as attorney's fees; and
- To pay the costs of the suit.

SO ORDERED.[6] (Words in bracket ours)

Thereafter, petitioner appealed the case to the RTC which rendered a decision on February 4, 1998 affirming the decision of the MeTC, thus:

WHEREFORE, PREMISES CONSIDERED, except with the qualification that any demolition of the structures introduced by the defendant should be made only after the procedures mandated under Rule 39, Section 10(d)[7] is observed, the MTC Manila decision is hereby AFFIRMED, with costs against defendant.[8]

Aggrieved with the ruling of the RTC, petitioner elevated the matter to the CA. On May 25, 2001, the CA promulgated its assailed decision dismissing petitioner's appeal and affirming the RTC decision. The CA held:

Thus, the Court has ruled that lease agreements with no specified period, but where monthly rentals are paid monthly are considered to be on a month-to-month basis. They are for a definite period and expire at the last day of any given thirty-day period, upon proper demand, and a notice by the lessor to vacate.

In the case at bar, it was found by the two lower courts that the lease over the subject property was on a month-to-month basis, and there was a proper demand to vacate the premises made by the respondent-appellee on petitioner-appellant. Consequently, the verbal lease agreement entered into by the parties has been validly terminated on April 11, 1996, when respondent-appellee gave a written demand on the petitioner-appellant to pay his back rentals, and to vacate the premises.

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Respondent-appellee claims that from July 1995 up to the filing of the complaint, the petitioner-appellant has refused to heed the demand to settle his unpaid rentals and to vacate the leased premises. On the other hand, petitioner-appellant argues that the monthly rentals from July 1995 to January 1997 at P420 per month were paid in consignment case filed before Branch 3 of Metropolitan Trial Court of Manila.

When petitioner-appellant filed a consignment case, a fact was established that there was really an unpaid rental commencing from July 1995. A closer examination of the records reveals that the complaint for ejectment was filed on September 23, 1996, while the consignment case was commenced on May 15, 1997. Hence, when the petitioner-appellant paid the back rentals, the respondent-appellee had already filed the ejectment case. Case law is to the effect that the acceptance by the lessor of the payment by lessee of rentals in arrears does not constitute a waiver of the default of the payment of rentals as a valid cause of action for ejectment. xxx.[9]

Petitioner's subsequent motion for reconsideration was likewise denied by the CA in its Resolution dated March 14, 2002. Hence, petitioner filed the instant petition anchored on the following grounds:

- THE HONORABLE COURT OF APPEALS ERRED IN FAILING TO CONSIDER THE ORDINANCE NO. 8020 ENACTED BY THE CITY OF MANILA ON MARCH 12, 2001 AUTHORIZING ACQUISITION

OF THE SUBJECT PROPERTY, FOR RESALE TO THE BONAFIDE TENANT THEREAT, UNDER THE LAND-FOR-THE-LANDLESS PROGRAM OF THE CITY OF MANILA.

- THE HONORABLE COURT OF APPEALS ERRED IN FAILING TO CONSIDER OR TAKE JUDICIAL NOTICE OF THE FACT THAT THE SUBJECT PROPERTY IS UNDER EXPROPRIATION BY THE CITY OF MANILA AND THEREFORE PETITIONER BY FORCE OF P.D. NO. 1517 IS A BENEFICIARY OF "NO EVICTION RULE" UNDER THE SAME.

- THE HONORABLE COURT OF APPEALS ERRED IN FAILING TO CONSIDER THE RENT CONTROL LAW (BP BLG. 877) INsofar AS ALLOWABLE INCREASE OF RENTAL OF THE SUBJECT PROPERTY IS CONCERNED, I.E. FROM P480.00/PER MONTH TO P1,300.00/PER MONTH.

- THE HONORABLE COURT OF APPEALS ERRED IN FAILING TO REVERSE THE ASSAILED DECISION (ANNEX "A") IN FAVOR OF THE PETITIONER.[10]

Petitioner argues that the decision rendered by the MeTC of Manila, Branch 11, must be voided on account of the approval of Ordinance No. 8020 by the City Council of Manila on March 12, 2001 which authorized the acquisition of the subject property for resale to qualified tenants under the land-for-the-landless program of the City of Manila. He also maintains that the property is within the area for Priority Development Zone pursuant to Section 6 of Presidential Decree No. 1517 (P.D. No. 1517) or the Urban Land Reform Act. Petitioner claims that he is qualified under the so called "no eviction rule" considering that he has resided on the leased premises for more than ten (10) years already.

Likewise, petitioner insists that the agreed monthly rental is not P1,300.00 but P420.00 only. According to petitioner, the monthly rental had been increased from P420.00 to P1,300.00 which was a clear violation of the allowable increase under Batas Pambansa Blg. 877 (B.P. Blg. 877) or the Rent Control Law. Nevertheless, petitioner paid the said increase albeit under protest but when respondent did not accept his payments, he was forced to file a consignment case where the back rentals for the period July 1995-April 1996 had been deposited in court. These payments were withdrawn by respondent from the court, thus, respondent no longer had a cause of action against him.

In her Comment,[11] respondent asserts that Ordinance No. 8020 does not apply in this case because the said ordinance did not indicate that the subject property had been acquired by the City of Manila from the heirs of the late spouses Restua for distribution to petitioner. Moreover, the ordinance was approved only on March 12, 2001 while the ejectment case was filed on September 23, 1996. The ordinance cannot belatedly affect the outcome of the instant case. Inasmuch as expropriation proceedings have not been instituted, respondent and her siblings remain the owners of the subject property and the leased premises.

Respondent also avers in her Memorandum[12] that she was able to prove that grounds exist for the ejectment of petitioner when the latter failed to pay the rent for over three (3) months. She further asserts that her acceptance of the rents paid by petitioner by way of consignment will not legitimize petitioner's unlawful possession of the premises.

As to petitioner's claim that he is entitled to the benefits of P.D. No. 1517, respondent asseverates that under it, only legitimate tenants can take advantage of its beneficent provisions. By reason of petitioner's failure to pay the rents, his possession became unlawful and he could not be considered a bona fide tenant of the property.

We agree with the findings of all the three (3) lower courts that the verbal lease agreement between petitioner and respondent was on a monthly basis. It is settled that if the rent is paid monthly, the lease is on a month-to-month basis and may be terminated at the end of each month. Article 1687 of the Civil Code is in point, thus:

Art. 1687. If the period for the lease has not been fixed, it is understood to be from year to year, if the rent agreed upon is annual; from month to month, if it is monthly; from week to week, if the rent is weekly; and from day to day, if the rent is to be paid daily. However, even though a monthly rent is paid, and no period for the lease has been set, the courts may fix a longer term for the lease after the lessee has occupied the premises for over one year. If the rent is weekly, the courts may likewise determine a longer period after the lessee has been in possession for over six months. In case of daily rent, the courts may also fix a longer period after the lessee has stayed in the place for over one month.

In the case at bar, it is undisputed that the lease was verbal, that the period for the lease had not been fixed, that the rentals were paid monthly, and that proper demand and notice by the lessor to vacate were given. In the case of *Acab v. Court of Appeals*,^[13] this Court held:

...lease agreements with no specified period, but in which rentals are paid monthly, are considered to be on a month-to-month basis. They are for a definite period and expire after the last day of any given thirty-day period, upon proper demand and notice by the lessor to vacate.^[14]

A lease on a month-to-month basis provides for a definite period and may be terminated at the end of any month, hence, by the failure of the lessees to pay the rents due for a particular month, the lease contract is deemed terminated as of the end of that month.^[15] Applying this principle, the lease contract in the instant case was deemed terminated at the end of the month when the petitioner, as lessee, failed to pay the rents due.

B.P. Blg. 877^[16] was the rent control law in force at the time the complaint for unlawful detainer was filed. Sec. 5 thereof allows for judicial ejectment of a lessee on the following grounds:

Section 5. Grounds for Judicial Ejectment. â€- Ejectment shall be allowed on the following grounds:

(b) Arrears in payment of rent for a total of three (3) months: Provided, that in case of refusal by the lessor to accept payment of the rental agreed upon, the lessee may either deposit, by way of consignment, the amount in court, or with the city or municipal treasurer, as the case may be, or in a bank in the name of and with notice to the lessor, within one month after the refusal of the lessor to accept payment.

The lessee shall thereafter deposit the rental within ten days of every current month. Failure to deposit rentals for three months shall constitute a ground for ejectment. If an ejectment case is already pending, the court upon proper motion may order the lessee or any person or persons claiming under him to immediately vacate the leased premises without prejudice to the continuation of the ejectment proceedings. At any time, the lessor may, upon authority of the court, withdraw the rentals deposited.

The lessor, upon authority of the court in case of consignment and upon joint affidavit by him and the lessee to be submitted to the city or municipal treasurer and to the bank where deposit was made, shall be allowed to withdraw the deposits.

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(f) Expiration of the period of the lease contract. No lessor or his successor-in-interest shall be entitled to eject the lessee upon the ground that the leased premises has been sold or mortgaged to a third person regardless of whether the lease or mortgage is registered or not.

Clearly, grounds for ejectment exist in this case and respondent could lawfully ask for petitioner's eviction from the premises. As already discussed, the month-to-month lease contract of the parties expired when petitioner failed to pay the rentals and the lease was not renewed by respondent. Likewise, respondent sufficiently proved that from July 1995 up to the filing of the complaint for ejectment, petitioner has failed to pay his monthly rentals for over three (3) months and even refused to settle his unpaid rentals and vacate the leased premises despite demand to do so. The subsequent payment by petitioner of his arrears by way of consignment and the acceptance

by respondent of said payments will not operate to bar the eviction of petitioner. The evidence on record reveals that the ejectment case was instituted on September 23, 1996 while the petition for consignation was filed only on May 15, 1997 which means that when petitioner paid the back rentals, respondent had already filed the ejectment case. The subsequent acceptance by the lessor of rental payments does not, absent any circumstance that may dictate a contrary conclusion, legitimize the unlawful character of the possession.[17] Hence, the respondent acted well within her right to file a complaint for unlawful detainer.

As to the petitioner's contention that the monthly rental is only P420.00 and not P1,300.00, we quote with approval the ruling of the CA, thus:

We have gone through the records and We have no reason to depart from the factual finding of the RTC that the petitioner-appellant failed to show any receipt to establish his claim that the monthly rental is only P420. The rule is well-settled that he who alleges a fact has the burden of proving it and a mere allegation is not evidence. The Official Receipts No. 1698 and 1759 are not competent proofs to show that the true rental is P420. Those receipts are for rentals paid for December 1993 and February 1994. The bone of contention here is the rental starting from July 1995. On the other hand, as shown by the records, the respondent-appellee was able to establish that the agreed rental since March 1995 is P1,300.[18]

Petitioner having failed to prove his claim that the amount of rental starting July 1995 was just P420.00, the findings of the trial courts, as affirmed by the CA, stand. Likewise, petitioner's argument that the increase in the monthly rental from P420.00 to P1,300.00 contravenes the allowable increase under B.P. Blg. 877,[19] the following disquisition of the CA is relevant:

Further, We cannot allow the petitioner-appellant to belatedly question the validity of the increase of the rental and issue of payment under protest. Jurisprudence is replete with the rule that no new issues shall be raised for the first time on appeal.[20]

In the case of *Ulep v. Court of Appeals*,[21] the Court made the following pronouncement:

Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time on appeal. Basic considerations of fair play, justice and due process underlie the rule. It would be unfair to the adverse party who would have no opportunity to present evidence in contra to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court.[22]

We cannot take an opposite stance in the present case. The issue of the validity of the alleged increase in rent was not a litigated issue in the trial courts. To allow petitioner to do so on appeal would be utterly unfair to respondent. The CA correctly opted not to resolve the issue in its decision of May 25, 2001.

Moreover, petitioner did not mention the supposed valid increase in rental authorized by law, which he should have paid nor did he offer to pay or deposit the same within the period of time mandated by law.

In the same vein, the issues concerning petitioner's entitlement to the benefits of Ordinance No. 8020 were raised by petitioner only in his motion for reconsideration of the CA decision, "the effect of which is as if it was never duly raised in that court at all,"[23] while the issue on the applicability of P.D. No. 1517 was only raised before this Court. Nevertheless, even if we delve into the merits of petitioner's contentions on the matter, the same must be rejected.

Petitioner cannot capitalize on Ordinance No. 8020 passed by the City Council of Manila which authorized the City to acquire the lot owned by the late spouses Aurelio and Clara Restua for resale to its qualified and bona fide tenants/occupants under the land-for-the-landless program of the City. It should be noted that the Ordinance was approved and took effect only on March 12, 2001 or almost five (5) years after the case for ejectment was filed by

respondent on September 23, 1996. Basic is the rule that no statute, decree, ordinance, rule or regulation (and even policies) shall be given retrospective effect unless explicitly stated so.[24] We find no provision in Ordinance No. 8020 which expressly gives it retroactive effect to those tenants with pending ejectment cases against them. Rather, what the said Ordinance provides is that it "shall take effect upon its approval," which was on March 12, 2001.

Further, no proof was presented which showed that the property being leased by petitioner has been acquired by the City of Manila for resale to him. Ordinance No. 8020 merely stated that the lot owned by the late spouses Restua shall be acquired by the City for resale to its qualified and bona fide tenants/occupants. Section 4 of the Ordinance provides that the bona fide tenants/occupants shall be determined under the existing rules and procedures of the Urban Settlements Office of the City of Manila. It was therefore presumptuous of petitioner to assume that he was qualified as a bona fide tenant/occupant considering that his possession of the leased premises was the subject of litigation at that time. Indeed, he cannot take refuge in the Ordinance so as to forestall his eviction from the property.

Petitioner also asserts that he cannot be evicted from the premises pursuant to the so-called "no eviction rule" under Section 6 of P.D. No. 1517[25] which reads:

Sec. 6. Land Tenancy in Urban Land Reform Areas. -- Within the Urban Zones legitimate tenants who have resided on the land for ten years or more who have built their homes on the land and residents who have legally occupied the lands by contract, continuously for the last ten years shall not be dispossessed of the land and shall be allowed the right of first refusal to purchase the same within a reasonable time and at reasonable prices, under terms and conditions to be determined by the Urban Zone Expropriation and Land Management Committee created by Section 8 of this Decree.

To be entitled to the benefits of P.D. No. 1517, a party must provide prima facie evidence of the following facts: a) that the property being leased falls within an Area for Priority Development and Urban Land Reform Zone; b) that the party is a tenant on said property as defined under Section 3(f) of P.D. No. 1517; c) that the party built a house on said property; and d) that the party has been residing on the property continuously for the last ten (10) years or more, reckoned from 1968.[26]

While there is no dispute that petitioner was able to establish the third and fourth requisites, i.e., that he built a house on said property and that he has been residing on the property continuously for more than ten (10) years, no convincing evidence was offered to prove the first and second requisites, i.e., that the property being leased falls within an Area for Priority Development and Urban Land Reform Zone and that he is a tenant on said property as defined under Section 3(f) of said decree.

The case of *Heirs of Antonio Bobadilla v. Castillo*[27] declared as follows:

As the decree (P.D. No. 1517) is not self-executing, Proclamation No. 1967 (issued on May 14, 1980) was issued identifying 244 specific sites in Metropolitan Manila as Areas for Priority Development (APD) and Urban Land Reform Zones (ULRZ). It amended Proclamation No. 1893 (issued on September 11, 1979) by expressly limiting the operation and narrowing the coverage of PD No. 1517 from the entire Metropolitan Manila to the specific areas declared as APD/ULRZ.[28]

Petitioner failed to show that Zamora Street, the place where the subject property is situated, was identified as APD/ULRZ by Proclamation No. 1967. Except for his allegation "which respondent refutes" that the property is within the area for priority development zone,[29] petitioner presented no concrete proof to substantiate said claim. The law requires in civil cases that the party who alleges a fact has the burden of proving it.[30] There being no showing that the property being leased by petitioner is located within any of the

APD/ULRZ, the right not to be dispossessed and the right of first refusal could not have accrued in petitioner's favor.

Likewise, petitioner could not be considered a tenant as defined under Section 3(f) of P.D. No. 1517, thus:

(f) Tenant refers to the rightful occupant of land and its structures, but does not include those whose presence on the land is merely tolerated and without the benefit of contract, those who enter the land by force or deceit, or those whose possession is under litigation.

Petitioner had a month-to-month lease contract with respondent, which expired when he failed to pay the rentals. When petitioner opted to stay after the expiration of the lease contract, he had become an unlawful occupant of the place. Thus, he could not avail of the benefits of P.D. No. 1517, "because its intended beneficiaries are legitimate tenants, not usurpers or occupants by tolerance."^[31] Besides, petitioner's possession over the property is obviously under litigation, thus, his insistence that he was a "tenant" within the contemplation of P.D. No. 1517 was nothing more than a ludicrous attempt to bring himself into the scope of the decree.

Another factor which militates against petitioner's claim is the fact that there is no intention on the part of respondent to sell the property. P. D. No. 1517 applies where the owner of the property intends to sell it to a third party.^[32] As alleged in her complaint, respondent merely intended to use the leased premises for herself and her siblings. Petitioner, therefore, cannot invoke P.D. No. 1517 to abatement of the complaint for ejectment.

All told, petitioner failed to show why the actions of the three courts which have passed upon the same issues should be reversed.

WHEREFORE, the petition for review is hereby DENIED. The assailed decision of the CA in CA-G.R. SP No. 46910 is hereby AFFIRMED.

SO ORDERED.

Puno, C.J., (Chairperson), Carpio, Corona, and Bersamin, JJ., concur.

[1] Penned by Associate Justice Perlita J. Tria Tirona (ret.), with Associate Justices Eloy R. Bello, Jr. (ret.) and Mercedes Gozo-Dadole (ret.), concurring; rollo, pp. 23-38.

[2] Id. at 37-38.

[3] Id. at 80-85.

[4] Id. at 39-41.

[5] Id. at 43-49.

[6] Id. at 78.

[7] Section 10(d) of Rule 39 reads:

Sec. 10. Execution of judgments for specific act.

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(d) Removal of improvements on property subject of execution. -- When the property subject of the execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon motion of the

judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.

[8] Supra note 6 at 85.

[9] Id. at 31-32.

[10] Id. at 12.

[11] Id. at 97-103.

[12] Id. at 124-136.

[13] G.R. No. 112285, February 21, 1995, 241 SCRA 546.

[14] Id. at 550-551.

[15] Arquelada v. Philippine Veterans Bank, G.R. No. 139137, March 31, 2000, 329 SCRA 536, 554-555.

[16] Approved on June 12, 1985.

[17] Tagbilaran Integrated Settlers Association (TISA) Incorporated v. Court of Appeals, G.R. No. 148562, November 25, 2004, 444 SCRA 193, 199.

[18] Rollo, p. 33.

[19] Sec. 1. Monthly Rentals and Maximum Increases. - Beginning July 1, 1985 and for a duration of two and a half years thereafter ending on December 31, 1987, monthly rentals of all residential units not exceeding four hundred eighty (P480.00) pesos shall not be increased by the lessor by more than the rates herein provided:

July 1, 1985 to December 31, 1985 10 percent

January 1, 1986 to December 31, 1986 20 percent

January 1, 1987 to December 31, 1987 20 percent

In Arquelada v. Philippine Veterans Bank (supra note 15), the Court held, "Initially, the effectivity of B.P. Blg. 877 was up to 31 December 1987 only. However, just like its predecessor, the effectivity of B.P. Blg. 877 was extended up to 31 December 1989 by Republic Act No. 664330 Subsequently, the legislature passed Republic Act No. 662831 and Republic Act No. 764432 which both extended the effectivity of B.P. Blg. 877 for another three (3) years. Finally, Republic Act No. 843733 gave another extension to the rent control period in B.P. Blg. 877 from 1 January 1998 up to 31 December 2001. Hence, presently, the controlling rental law for certain residential units is still B.P. Blg. 877."

[20] Supra note 18.

[21] G.R. No. 125254, October 11, 2005, 472 SCRA 241.

[22] Id. at 257.

[23] Manila Bay Club Corporation v. Court of Appeals, G.R. No. 110015, July 11, 1995, 245 SCRA 715, 729.

[24] Republic v. Sandiganbayan (Third Division), G.R. No. 113420, March 7, 1997, 269 SCRA 316, 332-333.

[25] Issued on June 11, 1978.

[26] Fernando v. Lim, G.R. No. 176282, August 22, 2008.

[27] G.R. No. 165771, June 29, 2007, 526 SCRA 107.

[28] Id. at 112.

[29] Memorandum for the Petitioner, rollo, p. 149.

[30] Alonzo v. San Juan, G.R. No. 137549, February 11, 2005, 451 SCRA 45, 55.

[31] Delos Santos v. Court of Appeals, G.R. No. 127465, October 25, 2001, 368 SCRA 226, 229.

[32] Alcantara v. Reta, Jr., G.R. No. 136996, December 14, 2001, 372 SCRA 364, 370.

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