

SPOUSES REYNALDO AND ZENAIDA LEONG, RENATO C. LEONG AND ALFONSO D. LEONG, JR., Petitioners, vs. HON. EDUARDO ISRAEL TANGUANCO, Presiding Judge, Regional Trial Court, Br. 89, Imu...

G.R. No. 154632. March 14, 2008

Ponente: AZCUNA, J.

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AZCUNA, J.:

In this petition for review on certiorari under Rule 45 of the Rules on Civil Procedure, petitioners seek the reversal of the March 21, 2002 Decision[1] and July 19, 2002 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 54320 dismissing their petition and, in effect, upholding the May 18, 1999 and June 28, 1999 Orders[3] of respondent judge which denied their twin motions to dismiss/suspend proceedings and for consolidation.

On February 5, 1999, respondent Hermosa Savings and Loan Bank, Inc. (Hermosa Bank) filed an Ex-Parte Petition for the Issuance of Writ of Possession[4] against petitioners before the Regional Trial Court (RTC) of Bacoor, Cavite. Docketed as LRC Case No. 8843-99-11 and raffled in the sala of respondent judge, the petition alleged that on November 28, 1997 Hermosa Bank purchased at an extra-judicial foreclosure sale three parcels of land together with improvements therein, with a total area of ten thousand eight hundred sixty (10,860) square meters, situated in Bacoor, Cavite and covered by Transfer Certificate of Title (TCT) Nos. T-107260, T-225973 and T-225960; that the Certificate of Sale of Realty issued to it was duly registered and annotated with the Registry of Deeds of Cavite on December 17, 1997; that twelve (12) months from the date of registration of the sale had already elapsed and neither petitioners nor any person entitled thereto had exercised their right of redemption; that upon the expiration of the period, Hermosa Bank caused the consolidation of ownership over said parcels and secured under its name TCT Nos. 845841, 845801, and 845845; and that having consolidated its ownership thereon, it is entitled as a matter of right to a writ of possession.

Petitioners filed an Opposition with Urgent Motion to Dismiss/Suspend Proceedings and Motion for Consolidation,[5] countering that the extrajudicial foreclosure of the real estate mortgages as well as the subsequent auction sale of the three parcels of land are null and void. They asserted that the mortgage contracts, loan agreements, promissory notes and other documents needed to implement the loan were executed by petitioner Alfonso in favor of Hermosa Bank without consideration and were absolutely simulated. Petitioners claimed that Alfonso only agreed to sign the documents upon the insistent prodding of the bank's president, Benjamin J. Cruz, that they were needed for purposes only of the Bangko Sentral's audit of Hermosa Bank; in truth, the documents were required to cover up the loan of spouses Rene and Remedios Dado and Sierra Madre Development Corporation, who are the real debtors of the bank. To bolster their point, petitioners substantially restated the factual allegations embodied in their Complaint[6] filed against Hermosa Bank on March 16, 1999 for Declaration of Nullity of Contracts/Discharge of Mortgage, Annulment of Extra-judicial Foreclosure Sales, Reconveyance, Damages, and Injunction with Prayer for Restraining Order before the RTC of Las Piñas, Br. 255, and docketed as Civil Case No. LP-99-0072, thus:

- Sometime in 1987, plaintiff Alfonso was employed as the Assistant Vice-President of Asia Trust Development Bank for Countryside Banking. On 25 February 1987, he was introduced by Remedios L. Dado (“Dado”) by Norman Enriquez, a mutual friend. Dado asked him if he could help her secure a loan to set up a corporation to engage in the logging business, to be known as Sierra Madre Forest & Development Corporation (“Sierra Madre”).
- Dado showed a very attractive project study that would give a minimum potential income of P50 Million in a year’s operation. She gave her assurance that the loan will be paid within a month from the time the stumpage contract is released and executed by the Natural Resources Development Corporation. Finally, she offered 30% ownership to the bank which would grant the needed loan.
- Plaintiff Alfonso agreed to help her secure the necessary loan. They sought the help of defendant Cruz, who is the President and General Manager of Hermosa Bank. Moreover, defendant Cruz is a close friend and “kumpare” of plaintiff Alfonso.
- During the meeting, Dado laid down her proposal on the intended project to defendant Cruz. Defendant Cruz agreed to extend the needed loan thru defendant Hermosa Bank on the condition that plaintiff Alfonso would act as his nominee in the board of the corporation to represent his 30% holdings.
- Dado was able to secure the loan from defendant Hermosa Bank in the amount of ONE MILLION EIGHT HUNDRED FORTY FIVE THOUSAND PESOS (P1,845,000.00). On 4 March 1987 and 20 April 1987 they executed two loan agreements. She likewise executed a total of four promissory notes, with maturity dates of 2 June and 19 July 1987.
- Dado was not able to pay the loan when the promissory notes matured. She requested for another 90 days extension by issuing her personal checks to cover the payment of interest and penalties thereon. The maturity dates of the promissory notes were extended to 22 September 1987 and 18 October 1987. Dado’s personal checks were[,] however[,] dishonored for reason of “Closed Account.”
- Plaintiff Alfonso was forced to advance partial payment in the amount of P128,550.00, representing interest and penalties, to give Dado more time to pay the loan and to preserve his good relations with defendant Cruz.
- Dado did not pay the loan when it matured. Defendant Cruz, Dado, and plaintiff Alfonso even met at Sheraton Hotel on 2 June 1987 to discuss the loan[,] however, nothing materialized from the talks.
- Defendant Cruz requested plaintiff Alfonso to do something about Dado’s loan since the audit of the bank by the Central Bank was forthcoming. He asked plaintiff Alfonso to borrow from other banks and apply the proceeds to his loan to pay Dado’s loan. Plaintiff Alfonso ignored such request.
- In the meantime, plaintiff Alfonso, as Assistant Vice President of Asia Trust, continued to facilitate “buy-back” transactions of government securities between defendant Hermosa Bank and Asia Trust. This involves the sale of government securities with a guarantee from the seller that he will buy-back from the buyer the same securities at a given future date.
- Without the knowledge and consent of plaintiff Alfonso, defendant Cruz [had] been applying the proceeds of the “buy-back” transactions to pay Dado’s loan. Defendant Cruz and Hermosa Bank applied Asia Trust Check No. 13842 for ONE MILLION PESOS (P1,000,000.00) and Asia Trust Check No. 193669 for EIGHT HUNDRED FORTY FIVE THOUSAND PESOS (P845,000.00) to pay Dado’s loan, in full, even before their maturity dates. Four official receipts were thereafter issued showing that said amounts were received from “Remedios Dado” x x x.

- Plaintiff Alfonso confronted defendant Cruz upon learning that Dado's loan [had] been paid. He expressed his concern that if Dado discovers that her loan [had] been paid she may not pay it anymore. Defendant Cruz, however, informed him that the payments were necessary only for the purposes of Central Bank audit and that it would only appear in the books of defendant Hermosa Bank. Defendant Cruz, likewise, stated that Dado would not be informed of the same, in order for her and/or Sierra Madre to still be compelled to pay their obligation to defendant Hermosa Bank.
- Defendant Hermosa Bank through defendant Cruz then sent two demand letters to Dado and Sierra Madre on 8 March and 19 April 1988. Dado and Sierra Madre still did not pay the loan despite the demands x x x.
- Defendant Cruz later insisted to plaintiff Alfonso that he should help him with the payment of the loan of defendant Hermosa Bank with Asia Trust under the "buy back" transactions. The loan by then amounted to P2,600,000.00. He said that he would make it appear on the books of defendant Hermosa Bank that plaintiff Alfonso borrowed money from them. The proceeds of the fictitious loan will then be used to pay the loan with Asia Trust. He said that this would be for record purposes only until Dado shall have paid the loan and the Central Bank audit completed.
- Plaintiff Alfonso, due to the persistence and intimidations of defendant Cruz, agreed to his proposal. On 28 June 1988, he was made to sign two loan agreements amounting to ONE MILLION THREE HUNDRED THOUSAND PESOS (P1,300,000.00) each or a total of TWO MILLION SIX HUNDRED THOUSAND PESOS (P2,600,000.00), the approximate amount of the loan with Asia Trust at that time.
- Under the fictitious loan agreements, the loans were supposed to be secured by real estate mortgages particularly Transfer Certificate of Title Nos. 30740, 225976, 225973 and T-107260, which are all owned by the plaintiffs. However, at the same time[,] the plaintiffs have not executed any mortgage contract. The spaces provided for the payment of interests were not even filled up. The loan agreements were, likewise, made to appear to have been executed on 19 July 1988, when it was actually executed on 28 June 1988. In fact, in one of the agreements the date was erased and "28" and "June" was typed over it, when defendant Hermosa Bank discovered that plaintiff Alfonso dated his signature to reflect the true date of signing x x x.
- On the same date of 28 June 1988, defendants Hermosa Bank and Cruz prepared two "Discount/Loan Release Sheet" and made it appear that Manager's Check Nos. 9549 and 9559 both for P1,151,366.66 were supposedly released to plaintiff Alfonso and/or Carmelita Leong on 18 July 1988. Plaintiff Alfonso, however, dated his signature to again reflect the true date of signing which was 28 June 1988, and to prove that the same are fictitious. It thus appeared that the money was released to plaintiff Alfonso even before the alleged signing of the loan agreements, which is obviously highly irregular x x x.
- On 8 July 1988, defendant Cruz compelled plaintiff Alfonso to execute and sign real estate mortgages in favor of defendant Hermosa Bank. He said that this is necessary to make it appear that the loan agreements are legitimate for purposes of the Central Bank audit. Plaintiff Alfonso's property being insufficient, he secured the necessary power of attorney from plaintiffs Renato Leong, Sps. Reynaldo and Zenaida Leong, and Sps. Roberto and Yolanda Leong to mortgage their properties.
- Defendant Cruz prepared two (2) deeds of mortgage and made it appear that it was the security for the two loans. The said mortgage contracts were registered and annotated to the Transfer Certificate of Titles on 15 July 1988 x x x.
- On 18 July 1988, defendants Hermosa Bank and Cruz prepared two (2) promissory notes for plaintiff Alfonso to execute and sign. Plaintiff Alfonso inquired as to the purpose of said notes and why it appeared on the said notes

that the loans therein were secured by the mortgage contracts executed on 8 July 1988. Defendant Cruz informed him again that it was necessary only for purposes of Central Bank audit. Plaintiff Alfonso signed the promissory notes on the basis of defendant Cruz's assurances that the promissory notes were for that sole purpose alone x x x.

- On the same day of 18 July 1988, defendant Hermosa Bank through defendant Cruz issued a manager's check for P2,539,425.89 payable to Asia Trust Bank, as payment of its loan. Defendant Cruz, however, surreptitiously typed the phrase "FAO: A. C. LEONG" beside the machine printed name of Asia Trust Bank, without the knowledge and consent of plaintiff Alfonso x x x.

- After the said payment, defendant Cruz, in his own behalf and as President of defendant Hermosa Bank, and plaintiff Alfonso executed and signed a "Release and Quitclaim." Under the deed[,] defendants Hermosa Bank and Cruz and plaintiff Alfonso agreed to mutually hold one another free, harmless and discharged from any and all claims and damages arising from transaction between defendant Hermosa Bank and Asia Trust. The parties[,] in effect[,] discharged plaintiff Alfonso and the other plaintiffs from the loan agreements, the mortgage contracts, and the promissory notes they executed earlier x x x.

- Defendant Cruz assured the latter that the mortgages and the promissory notes would subsequently be discharged and released as soon as the Central Bank audit of their bank books was over.

- Defendant Cruz did not fulfill his promise to plaintiff Alfonso. The mortgages and promissory notes were not discharged. On 22 July 1988, plaintiff Alfonso received a letter from defendant Cruz requesting him to submit required documents for the loan, such as ID pictures, audited financial statements, photos of the mortgage properties and location plan. It thus appeared that the loan was released even before the required documents were submitted. This only shows that the loan was absolutely fictitious or that defendant Hermosa Bank is in violation of Central Bank rules x x x.

- On 7 February 1989, plaintiffs filed a complaint [docketed as Civil Case No. 89-3101] with the Regional Trial Court of Makati, Branch 139 (now Branch 63) for discharge of mortgage, annulment of contract, damages, and injunction with prayer for temporary restraining order against Sps. Rene and Remedios Dado, Sierra Madre Forest Development Corporation and Management Corporation, Benjamin J. Cruz, Hermosa Savings and Loan Bank, and the two sheriffs implementing the extra-judicial foreclosure sale.

- Defendants Hermosa Bank and Cruz, thereafter, filed their answer with a cross-claim against [cross-defendants] Sps. Dado and Sierra Madre. Defendants prayed that "in the event that judgment be rendered nullifying or diminishing the right of cross-claimant Bank in the P2,600,000.00 loan of plaintiffs, cross-defendants Dado and Corporation be ordered to indemnify cross-claimant Bank therefor."

- On 13 April 1990, then defendants Sps. Dados and Sierra Madre were declared in default for their failure to file "Answer" despite the service summons to them.

- On 14 September 1990, plaintiffs and defendants Cruz and Hermosa Bank filed a "Joint Manifestation and Motion" for the court to render judgment as to the defaulted defendants Dado and Sierra Madre, and to allow plaintiff Alfonso to present his evidence [ex-parte]. They alleged, among other things, that a judgment as against defaulted defendants might pave the way for the settlement of the case as to the other defendants, Benjamin Cruz and Hermosa Savings Bank x x x.

- On 10 September 1991, Judge Julio R. Logarta rendered a Decision against defendants [in default]. It found plaintiffs [claims] to be valid and ordered the defendants [in default] Dado and Sierra Madre to pay the total amount of loan being claimed by defendant Hermosa Bank and [ordered] them to pay the costs of the suit x x x.

- On 19 February 1998 the Trial Court rendered [an] Order dismissing the case without prejudice for failure to prosecute due to the [absence] of plaintiffs' former counsel during the hearings. Plaintiffs' previous counsel[,] the SANCHEZ ROSALES MERCADO and MELCHOR Law Firm[,] never informed them that the case was dismissed. Plaintiffs only knew of the dismissal sometime [in] October 1998, when plaintiff Alfonso went to the trial court to personally check what [had] happened to the case x x x.

- The undersigned law firm filed a motion for New Trial on 5 January 1999. However, before the [trial court] can render its decision, plaintiffs received on 15 January 1999 two letters from defendants Cruz and Hermosa Bank ordering them to vacate the properties covered by TCT Nos. 107260, T-225973, and T-225476. Defendant Cruz informed them that the said properties have already been transferred to defendant Hermosa Bank under [TCT] Nos. T-845841, T-845845, and T-845801 x x x.

- Plaintiff Alfonso upon checking with the Register of Deeds of Las Piñas City also found out that title to his property, TCT No. 304740, [had] likewise been cancelled and a new one a [sic] has been issued, TCT No. T-69716, in defendant Hermosa Bank's name.

- Plaintiff[,] because of the unjust acts of defendants Cruz and Hermosa Bank in transferring the title of their properties to its name and threatening to oust [them] from their properties[,] decided to withdraw their pending motion for new trial. They instead decided to avail of their right to file the action anew and initiate this complaint before this Honorable Court.

Citing *Cometa v. Intermediate Appellate Court*,^[7] petitioners alleged that before the Cavite RTC could issue a writ of possession, the issues as to the validity of the real estate mortgage contracts, loan agreements, promissory notes, extrajudicial foreclosure and auction sale of the subject properties must first be resolved by the Las Piñas RTC. They averred that their rights in Civil Case No. LP-99-0072 would be greatly and gravely prejudiced and that their claims in said case would be rendered nugatory if the court would allow Hermosa Bank to prematurely take possession of the properties. While petitioners agreed that it is ministerial for the court to issue a writ of possession in favor of the purchaser in a foreclosure sale, they referred to the case of *Barican v. Intermediate Appellate Court*^[8] wherein this Court disposed that the rule is not unqualified if justice and equity would be better served thereby.

Petitioners noted that Hermosa Bank violated their status quo agreement in Civil Case No. 89-3101 before the Makati RTC. They recalled that in said case they prayed for the issuance of a preliminary injunction to enjoin the bank from extrajudicially foreclosing and selling the subject properties at public auction. In the March 20, 1989 hearing, however, Hermosa Bank manifested that the issue on preliminary injunction should be deferred and integrated on the trial on the merits and that, in the meantime, it would be amenable to maintain the status quo. Relying on its statement, petitioners no longer pursued their prayer. But contrary to their accord, Hermosa Bank conducted the public auction while the case was pending and the trial court was yet to render its decision on the merits of the case.

The fact that they did not exercise their right of redemption was not denied by petitioners. Nonetheless, citing again the case of *Cometa*, they argued that the redemption of the subject properties would be inconsistent with their claim of invalidity of the mortgage contracts, loan agreements and promissory notes, and would mean an implied admission or conformity to the regularity of the extrajudicial foreclosure and auction sales held. In any case, petitioners pointed out that the period of redemption has not even elapsed since, according to *Consolidated Bank and Trust Corporation (Solidbank) v. Intermediate Appellate Court*,^[9] the pendency of an action tolls the term for the exercise of the right of redemption.

Lastly, petitioners posited that the instant case should be dismissed/suspended and consolidated with the civil case

pending before the Las Piñas RTC. Taking their cue from *Active Wood Products Co., Inc. v. Court of Appeals*,^[10] they advanced that the consolidation of their case, Civil Case No. LP-99-0072, with *Hermosa Bank's* case, LRC Case No. 8843-99-11, is proper since both cases involve a common question of law and fact, with the same parties and subject matter. Aside from avoiding confusion and unnecessary cost and expense, petitioners also opined that the Las Piñas RTC, as a court of general jurisdiction, has broader jurisdiction and competence to rule upon the validity of the mortgage contracts, loan agreements, promissory notes, extrajudicial foreclosure and auction sale. They further asserted that the issues raised in this case would only be determined in an ordinary civil action and not in a summary ex-parte proceeding.

After giving *Hermosa Bank* the opportunity to file its Reply to the Opposition, the Cavite RTC issued its assailed Order^[11] on May 18, 1999. In denying the relief prayed for by petitioners, the court held:

The factual backgrounds of the *Cometa* and *Barican* cases, however, are vastly different from the case at bar.

The *Cometa* case involved an execution under Rule 39, Section 35 of the Rules of Court and the properties were sold at an unusually lower price than their true value, while in *Barican*, the mortgagee bank took five years from the time of foreclosure on 10 October 1980 before filing the petition for issuance of writ of possession on 16 August 1985. Earlier, the property had been sold to third parties who assumed the indebtedness of the mortgagor and took possession of the property.

The Supreme Court held that under the circumstances the obligation of the court to issue the writ of possession ceased to be ministerial.

In the case at bar, however, none of these equitable circumstances is present so as to justify making an exception to the rule that the issuance of a writ of possession to a purchaser in an extra judicial foreclosure is ministerial on the part of the court.

The mere pendency of Civil Case No. LP-99-0072 is not sufficient legal ground to justify the non-issuance of a writ of possession in favor of the petitioner.

In the case of *Spouses Eduardo Vaca and Ma. Luisita Pilar v. Court of Appeals and Associated Bank* (G.R. No. 109672, 14 July 1994), the Supreme Court, citing the earlier cases of *Vda. de Jacob v. Court of Appeals* (G.R. Nos. 88602 & 89544, 06 April 1990, 184 SCRA 1990) and *Navarra v. Court of Appeals* (G.R. No. 86237, 17 December 1991, 204 SCRA 850), decreed that the pendency of a separate civil suit questioning the validity of the mortgage or its foreclosure cannot be a legal ground for refusing the issuance of a writ of possession because the same is a ministerial act of the trial court after title has been consolidated in the name of the mortgagee.

Likewise, for obvious reasons, respondents' prayer for the consolidation of this case with the civil case in *Las Piñas* is not warranted.

Pursuant to Section 7 of Act No. 3135, it is this Court which has jurisdiction over this case considering that the subject parcels of land are all situated in *Bacoor, Cavite*.

Petitioners moved to reconsider the Order but reconsideration was denied;^[12] hence, on August 12, 1999, they filed a Petition for Certiorari with Prayer for Temporary Restraining Order and/or Preliminary Injunction^[13] before the CA. The following day, however, the Cavite RTC issued the writ of possession in favor of *Hermosa Bank*.

On March 21, 2002, the CA dismissed the petition for being moot and academic.^[14] It briefly stated that:

As early as August 13, 1999, LRC Case No. 8843-99-11 had already been decided and a Writ of Possession had been issued in favor of the herein Private Respondents x x x. In fact, Respondent bank had already been

placed in possession and occupancy of the properties subject of said writ. By reason thereof, LRC Case No. 8843-99-11 is deemed terminated with finality and therefore, there is nothing more to consolidate with Civil Case No. LP 99-0072.[15]

The motion for reconsideration filed by petitioners was denied;[16] hence, this petition.

Petitioners assert that:

The dismissal of the petition under Rule 65 by the CA based on it being moot and academic is patently erroneous;

- The issues as to the validity of the real estate mortgage contracts, loan agreements, promissory notes, extrajudicial foreclosure and auction sale of petitioners' properties must first be resolved in the civil case pending in the Las Piñas RTC since the question of whether respondent Hermosa Bank is entitled to a writ of possession in the LRC case is dependent thereon; and that
- The consolidation and transfer of the title to the subject properties in favor of Hermosa Bank are null and void because the period of redemption is tolled by the pendency of the civil action.

Petitioners contend that the CA was clearly mistaken in hastily concluding that their petition was moot and academic because at the time they filed the petition on August 12, 1999 it still had the opportunity to promptly act on the incident and issue, at the very least, a temporary restraining order to preserve the status quo just in time before the trial court issued the writ of possession a day after. Now, they stress that this Court has the power to correct the CA's error with our authority to declare the nullity of the questioned orders of the Cavite RTC, which would necessarily remove the legal basis for the issuance of the writ of possession.

It is now prayed for by petitioners that this Court look upon the "iniquitous" situation that they were forced into for being "morally compelled" to execute absolutely simulated loan agreements secured by real estate mortgages. They claim that the mortgage contracts they signed in favor of Hermosa Bank are considered as contracts of adhesion that may be struck down as void and unenforceable since petitioners were deprived of the opportunity to bargain on equal footing. Petitioners assert that they are mere individuals with limited resources compared to the bank which is a corporation with financial means such that what is a question of survival to the former is just a mere bad investment on the part of the latter.

Petitioners insist that their dispossession of the subject properties would bring grave and irreparable injury, a damage that is greater to them than it would cause to Hermosa Bank if the turnover is delayed. They maintain that even without the writ of possession, the right of the bank is protected and secured as the titles to the properties have already been transferred in its name. There is, therefore, no urgent need to evict them and the students of Holy Infant of Jesus High School, Inc., the school building of which also occupied around 538 sq. m. of the litigated lots. In the meantime, petitioners are inviting this Court to give them the opportunity to fully present their claims before the Las Piñas RTC.

Lastly and essentially, petitioners again fervidly invoke this Court's rulings in Barican, Cometa, Active Wood, and Consolidated Bank cases to support their proposition that courts have the jurisdiction and discretion to stay the writ of possession or declare its issuance as premature, to order the consolidation of cases, and to consider that a pending action tolls the period for the exercise of the right of redemption.

Petitioners have not shown any reversible error on the part of the CA.

As the CA correctly found, the RTC of Bacoor, Cavite had already granted the writ of possession sought by Hermosa. Hence, the petition to consolidate the case before the RTC of Bacoor, Cavite with the case pending before the RTC of Las Piñas, had become moot and academic.

This does not, however, preclude petitioners from availing themselves of appropriate remedies depending upon the outcome in the RTC of Las Piñas case.

WHEREFORE, the petition is DENIED.

No costs.

SO ORDERED.

Puno, C.J., (Chairperson), Carpio, Corona, and Leonardo-De Castro, JJ., concur.

[1] Penned by Justice Candido V. Rivera, with Associate Justices Delilah Vidallon-Magtolis and Juan Q. Enriquez, Jr., concurring; CA rollo, pp. 204-209.

[2] Id. at 232-233.

[3] Records, pp. 107-111, 167.

[4] Id. at 1-6.

[5] Id. at 42-58.

[6] Id. at 65-79.

[7] No. L-69294, June 30, 1987, 151 SCRA 563.

[8] No. L-79906, June 20, 1988, 162 SCRA 358.

[9] No. L-73976, May 29, 1987, 150 SCRA 591.

[10] G.R. No. 86603, February 5, 1990, 181 SCRA 774.

[11] Records, pp. 107-111.

[12] Id. at 118-126, 167.

[13] CA rollo, pp. 2-21.

[14] Id. at 204-209.

[15] Id.

[16] Id. at 213-222, 232-233.

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