

COCA-COLA BOTTLERS (PHILS.), INC. AND ERIC MONTINOLA, PETITIONERS, VS. SOCIAL SECURITY COMMISSION AND DR. DEAN CLIMACO, RESPONDENTS.

G.R. No. 159323. July 31, 2008

Ponente: REYES, R.T., J.

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REYES, R.T., J.:

WE are confronted with triple remedial issues on prejudicial question, forum shopping, and *litis pendentia*.

We review on certiorari the Decision[1] of the Court of Appeals (CA) upholding the order of the Social Security Commission (SSC),[2] denying petitioners' motion to dismiss respondent Climaco's petition for compulsory coverage with the Social Security System (SSS).

The Facts

Petitioner Coca-Cola Bottlers (Phils.), Inc. is a corporation engaged in the manufacture and sale of softdrink beverages.[3] Co-petitioner Eric Montinola was the general manager of its plant in Bacolod City.[4] Respondent Dr. Dean Climaco was a former retainer physician at the company's plant in Bacolod City.[5]

In 1988, petitioner company and Dr. Climaco entered into a Retainer Agreement[6] for one year, with a monthly compensation of P3,800.00,[7] where he "may charge professional fees for hospital services rendered in line with his specialization." [8] The agreement further provided that "either party may terminate the contract upon giving thirty (30)-day written notice to the other." [9] In consideration of the retainer's fee, Dr. Climaco "agrees to perform the duties and obligations" [10] enumerated in the Comprehensive Medical Plan,[11] which was attached and made an integral part of the agreement.

Explicit in the contract, however, is the provision that no employee-employer relationship shall exist between the company and Dr. Climaco while the contract is in effect.[12] In case of its termination, Dr. Climaco "shall be entitled only to such retainer fee as may be due him at the time of termination." [13]

Dr. Climaco continuously served as the company physician, performing all the duties stipulated in the Retainer Agreement and the Comprehensive Medical Plan. By 1992, his salary was increased to P7,500.00 per month.[14]

Meantime, Dr. Climaco inquired with the Department of Labor and Employment and the SSS whether he was an employee of the company. Both agencies replied in the affirmative.[15] As a result, Dr. Climaco filed a complaint[16] before the National Labor Relations Commission (NLRC), Bacolod City. In his complaint, he sought recognition as a regular employee of the company and demanded payment of his 13th month pay, cost of living allowance, holiday pay, service incentive leave pay, Christmas bonus and all other benefits.[17]

During the pendency of the complaint, the company terminated its Retainer Agreement with Dr. Climaco. Thus, Dr. Climaco filed another complaint[18] for illegal dismissal against the company before the NLRC Bacolod City. He asked that he be reinstated to his former position as company physician of its Bacolod Plant, without loss of seniority rights, with full payment of backwages, other unpaid benefits, and for payment of damages.[19]

The Labor Arbiter, in each of the complaints, ruled in favor of petitioner company.[20] The first complaint was dismissed after Labor Arbiter Jesus N. Rodriguez, Jr. found that the company did not have the power of control over Dr. Climaco's performance of his duties and responsibilities. The validity of the Retainer Agreement was also recognized. Labor Arbiter Benjamin Pelaez likewise dismissed the second complaint in view of the dismissal of the first complaint.

On appeal, the NLRC, Fourth Division, Cebu City, affirmed the Arbiter disposition.[21] On petition for review before the CA, the NLRC ruling was reversed.[22] The appellate court ruled that using the four-fold test, an employer-employee relationship existed between the company and Dr. Climaco. Petitioners elevated the case through a petition for review on certiorari[23] before this Court.

Meantime, on November 9, 1994, while the NLRC cases were pending, Dr. Climaco filed with the SSC in Bacolod City, a petition[24] praying, among others, that petitioner Coca-Cola Bottlers (Phils.), Inc. be ordered to report him for compulsory social security coverage.

On April 12, 1995, petitioners moved for the dismissal of the petition on the ground of lack of jurisdiction. They argued that there is no employer-employee relationship between the company and Dr. Climaco; and that his services were engaged by virtue of a Retainer Agreement.[25]

Dr. Climaco opposed the motion.[26] According to Dr. Climaco, "[t]he fact that the petitioner [i.e., respondent Dr. Climaco] does not enjoy the other benefits of the company is a question that is being raised by the petitioner in his cases filed with the National Labor Relations Commission (NLRC), Bacolod City, against the respondent [i.e., petitioner company]."[27]

On July 24, 1995, the SSC issued an order stating among others, that the resolution of petitioner company's motion to dismiss is held in abeyance "pending reception of evidence of the parties." [28]

In view of the statements of Dr. Climaco in his opposition to the company's motion to dismiss, petitioners again, on March 1, 1996, moved for the dismissal of Dr. Climaco's complaint, this time on the grounds of forum shopping and *litis pendentia*. [29]

SSC and CA Dispositions

On January 17, 1997, the SSC denied petitioners' motion to dismiss, disposing as follows:

WHEREFORE, PREMISES CONSIDERED, the respondents' Motion to Dismiss is hereby denied for lack of merit.

Accordingly, let this case be remanded to SSS Bacolod Branch Office for reception of evidence of the parties pursuant to the Order dated July 24, 1995.

SO ORDERED.[30]

Petitioners' motion for reconsideration[31] received the same fate.[32]

On April 29, 1997, the company filed a petition for certiorari before the CA. On March 15, 2002, the CA dismissed the petition, with a *fallo* reading:

WHEREFORE, under the premises, the Court holds that public respondent Social Security Commission did not act with grave abuse of discretion in issuing the disputed orders, and the herein petition is therefore DISMISSED for want of merit.

SO ORDERED.[33]

Hence, the present recourse.

Issues

Petitioners raise the following issues for Our consideration:

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS ERRED IN RENDERING THE ASSAILED RESOLUTIONS, HAVING DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW AND THE APPLICABLE DECISIONS OF THIS HONORABLE COURT, CONSIDERING THAT:

I.

THE PREVIOUS COMPLAINT FOR REGULARIZATION AND/OR ILLEGAL DISMISSAL, WHICH IS NOW PENDING RESOLUTION BEFORE THE SUPREME COURT, POSES A PREJUDICIAL QUESTION TO THE SUBJECT OF THE PRESENT CASE. II.

GIVEN THE ATTENDANT CIRCUMSTANCES, RESPONDENT CLIMACO IS GUILTY OF FORUM SHOPPING, WHICH THEREBY CALLED FOR THE OUTRIGHT DISMISSAL OF HIS PETITION BEFORE THE SOCIAL SECURITY COMMISSION.

III.

THE PETITION SHOULD HAVE ALSO BEEN DISMISSED OUTRIGHT ON THE GROUND OF LITIS PENDENTIA, AS THERE ARE OTHER ACTIONS PENDING BETWEEN THE SAME PARTIES FOR THE SAME CAUSE OF ACTION.[34] (Underscoring supplied)

Our Ruling

The petition fails.

The Court notes that petitioners, in their petition, averred that the appeal from the NLRC and CA dispositions on the illegal dismissal of respondent Climaco is still pending with this Court. Upon verification, however, it was unveiled that the said case had already been decided by this Court's First Division on February 5, 2007.

While we deplore the failure of petitioners and counsel in updating the Court on the resolution of the said related case, We hasten to state that it did not operate to moot the issues pending before Us. We take this opportunity to address the questions on prejudicial question, forum shopping, and litis pendencia.

No prejudicial question exists.

Petitioners allege that Dr. Climaco previously filed separate complaints before the NLRC seeking recognition as a regular employee. Necessarily then, a just resolution of these cases hinge on a determination of whether or not Dr. Climaco is an employee of the company.[35] The issue of whether Dr. Climaco is entitled to employee benefits, as prayed for in the NLRC cases, is closely intertwined with the issue of whether Dr. Climaco is an employee of the company who is subject to compulsory coverage under the SSS Law. Hence, they argue, said regularization/illegal dismissal case is a prejudicial question.

The argument is untenable.

Our concept of prejudicial question was lifted from Spain, where civil cases are tried exclusively by civil courts, while criminal cases are tried exclusively in criminal courts. Each kind of court is jurisdictionally distinct from and independent of the other. In the Philippines, however, courts are invariably tribunals of general jurisdiction. This means that courts here exercise jurisdiction over both civil and criminal cases. Thus, it is not impossible that the criminal case, as well as the civil case in which a prejudicial question may rise, may be both pending in the same court. For this reason, the elements of prejudicial question have been modified in such a way that the phrase "pendency of the civil case in a different tribunal" has been eliminated.[36]

The rule is that there is prejudicial question when (a) the previously instituted civil action involves an issue

similar or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed.[37] It comes into play generally in a situation where a civil action and a criminal action both pend and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed. This is so because howsoever the issue raised in the civil action is resolved would be determinative juris et de jure of the guilt or innocence of the accused in the criminal case. [38]

Here, no prejudicial question exists because there is no pending criminal case.[39] The consolidated NLRC cases cannot be considered as "previously instituted civil action." In *Berbari v. Concepcion*,[40] it was held that a prejudicial question is understood in law to be that which must precede the criminal action, that which requires a decision with which said question is closely related.

Neither can the doctrine of prejudicial question be applied by analogy. The issue in the case filed by Dr. Climaco with the SSC involves the question of whether or not he is an employee of Coca-Cola Bottlers (Phils.), Inc. and subject to the compulsory coverage of the Social Security System. On the contrary, the cases filed by Dr. Climaco before the NLRC involved different issues. In his first complaint,[41] Dr. Climaco sought recognition as a regular employee of the company and demanded payment of his 13th month pay, cost of living allowance, holiday pay, service incentive leave pay, Christmas bonus and all other benefits.[42] The second complaint[43] was for illegal dismissal, with prayer for reinstatement to his former position as company physician of the company's Bacolod Plant, without loss of seniority rights, with full payment of backwages, other unpaid benefits, and for payment of damages.[44] Thus, the issues in the NLRC cases are not determinative of whether or not the SSC should proceed. It is settled that the question claimed to be prejudicial in nature must be determinative of the case before the court.[45]

There is no forum shopping.

Anent the second issue, petitioners posit that since the issues before the NLRC and the SSC are the same, the SSC cannot make a ruling on the issue presented before it without necessarily having a direct effect on the issue before the NLRC. It was patently erroneous, if not malicious, for Dr. Climaco to invoke the jurisdiction of the SSC through a separate petition. [46] Thus, petitioners contend, Dr. Climaco was guilty of forum shopping.

Again, We turn down the contention.

Forum shopping is a prohibited malpractice and condemned as trifling with the courts and their processes.[47] It is proscribed because it unnecessarily burdens the courts with heavy caseloads. It also unduly taxes the manpower and financial resources of the judiciary. It mocks the judicial processes, thus, affecting the efficient administration of justice.[48]

The grave evil sought to be avoided by the rule against forum shopping is the rendition by two (2) competent tribunals of two (2) separate and contradictory decisions. Unscrupulous litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached.[49]

It is well to note that forum shopping traces its origin in private international law on choice of venues, which later developed to a choice of remedies. In *First Philippine International Bank v. Court of Appeals*,[50] the Court had occasion to outline the origin of the rule on forum shopping. Said the Court:

x x x forum shopping originated as a concept in private international law, where non-resident litigants are given the option to choose the forum or place wherein to bring their suit for various reasons or excuses, including to secure procedural advantages, to annoy and harass the defendant, to avoid overcrowded dockets, or to select a more friendly venue. To combat these less than honorable excuses, the principle of forum non

conveniens was developed whereby a court, in conflicts of law cases, may refuse impositions on its jurisdiction where it is not the most "convenient" or available forum and the parties are not precluded from seeking remedies elsewhere.

x x x x

In the Philippines, forum shopping has acquired a connotation encompassing not only a choice of venues, as it was originally understood in conflicts of laws, but also to a choice of remedies. As to the first (choice of venues), the Rules of Court, for example, allow a plaintiff to commence personal actions "where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff" (Rule 4, Sec. 2[b]). As to remedies, aggrieved parties, for example, are given a choice of pursuing civil liabilities independently of the criminal, arising from the same set of facts. A passenger of a public utility vehicle involved in a vehicular accident may sue on culpa contractual, culpa aquiliana or culpa criminal - each remedy being available independently of the others - although he cannot recover more than once.

"In either of these situations (choice of venue or choice of remedy), the litigant actually shops for a forum of his action. This was the original concept of the term forum shopping.

"Eventually, however, instead of actually making a choice of the forum of their actions, litigants, through the encouragement of their lawyers, file their actions in all available courts, or invoke all relevant remedies simultaneously. This practice had not only resulted to (sic) conflicting adjudications among different courts and consequent confusion inimical (sic) to an orderly administration of justice. It had created extreme inconvenience to some of the parties to the action.

"Thus, 'forum-shopping' had acquired a different concept - which is unethical professional legal practice. And this necessitated or had given rise to the formulation of rules and canons discouraging or altogether prohibiting the practice."

What therefore started both in conflicts of laws and in our domestic law as a legitimate device for solving problems has been abused and misused to assure scheming litigants of dubious reliefs.[51]

Thus, in order to prevent forum shopping, the 1997 Rules of Civil Procedure now provide:

SEC. 5. Certification against forum shopping. - The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.[52]

Forum shopping is not only strictly prohibited but also condemned. So much so that "[f]ailure to comply with the foregoing requirements shall not be curable by mere amendment of the initiatory pleading but shall be cause for the dismissal of the case without prejudice. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt as well as a cause for administrative sanctions."[53]

There is forum shopping when one party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and

circumstances, and all raising substantially the same issues either pending in, or already resolved adversely, by some other court.[54] In short, forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the other.[55]

There is *res judicata* when (1) there is a final judgment or order; (2) the court rendering it has jurisdiction over the subject matter and the parties; (3) the judgment or order is on the merits; and (4) there is between the two cases identity of parties, subject matter and causes of action.[56]

Measured by the foregoing yardstick, Dr. Climaco is not guilty of forum shopping. While it is true that the parties are identical in the NLRC and in the SSC, the reliefs sought and the causes of action are different.

Admittedly, Dr. Climaco's basis in filing the cases before the NLRC and the SSC is his Retainer Agreement with the company. This does not mean, however, that his causes of action are the same:

x x x Some authorities declare the distinction between demands or rights of action which are single and entire and those which are several and distinct to be that the former arise out of one and the same act or contract and the latter out of different acts or contracts. This rule has been declared to be unsound, however, and as evidence of its unsoundness, reference has been made to the fact that several promissory notes may, and often do, grow out of one and the same transaction, and yet they do not constitute an entire demand. The better rule is that the bare fact that different demands spring out of the same or contract does not ipso facto render a judgment on one a bar to a suit on another, however distinct. It is clear that the right of a plaintiff to maintain separate actions cannot be determined by the fact that the claims might have been prosecuted in a single action. A plaintiff having separate demands against a defendant may, at his election, join them in the same action, or he may prosecute them separately, subject of the power of the court to order their consolidation. There may be only one cause of action although the plaintiff is entitled to several forms and kinds of relief, provided there is not more than one primary right sought to be enforced or one subject of controversy presented for adjudication.[57] (Underscoring supplied)

As the SSC and the CA correctly observed, different laws are applicable to the cases before the two tribunals. The Labor Code and pertinent social legislations would govern the cases before the NLRC, while the Social Security Law would govern the case before the SSC. Clearly, as the issues pending before the NLRC and the SSC are diverse, a ruling on the NLRC cases would not amount to *res judicata* in the case before the SSC.

The elements of *litis pendentia* are absent.

Lastly, petitioners contend that the petition of Dr. Climaco before the SSC is defective because there were pending actions between the same parties and involving the same issues in different fora.[58]

For *litis pendentia* to exist, there must be (1) identity of the parties or at least such as representing the same interests in both actions; (2) identity of the rights asserted and relief prayed for, the relief founded on the same facts; and (3) identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.[59]

In the case under review, there is no *litis pendentia* to speak of. As previously explained, although the parties in the cases before the NLRC and the SSC are similar, the nature of the cases filed, the rights asserted, and reliefs prayed for in each tribunal, are different.

As a last attempt, however, petitioners invoke Rule 16, Section 1(e) of the 1997 Rules of Civil Procedure. Petitioners contend that the petition Dr. Climaco lodged with the SSC is "another action" prohibited by the Rule.[60]

In *Solancio v. Ramos*,[61] the issue centered on whether the pending administrative case before the Bureau of

Lands is "another action," which would justify the dismissal of the complaint of plaintiff against defendants before the then Court of First Instance (now RTC) of Cagayan. Ruling in the negative, the Court noted that "both parties as well as the trial court have missed the extent or meaning of the ground of the motion to dismiss as contemplated under the Rules of Court." [62] Mr. Justice Regala, who wrote the opinion of the Court, explained the phrase "another action" in this wise:

This is not what is contemplated under the law because under Section 1(d), Rule 16 (formerly Rule 8) of the Rules of Court, [now Rule 1, Section 16(e) of the Rules of Court, *supra*] one of the grounds for the dismissal of an action is that "there is another action pending between the same parties for the same cause." Note that the Rule uses the phrase "another action." This phrase should be construed in line with Section 1 of Rule 2, which defines the word action, thus -

"Action means an ordinary suit in a court of justice, by which one party prosecutes another for the enforcement or protection of a right, or the prevention or redress of a wrong. Every other remedy is a special proceeding." [63]

Evidently, there is no "another action" pending between petitioners and Dr. Climaco at the time when the latter filed a petition before the SSC.

WHEREFORE, the petition is DENIED and the appealed decision AFFIRMED.

Costs against petitioners.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

* Designated as additional member vice Associate Justice Antonio Eduardo B. Nachura who took no part in the present case.

[1] Rollo, pp. 24-36. CA-G.R. SP No. 44031 dated March 15, 2002. Penned by Associate Justice Godardo Jacinto, with Associate Justices Eloy R. Bello, Jr. and Josefina Guevarra-Salonga, concurring.

[2] SSC Case No. 3-14335-95, entitled "Dr. Dean Climaco v. Coca-Cola Bottlers Philippines, Inc., Eric Montinola, General Manager, and Social Security System."

[3] Rollo, p. 4.

[4] *Id.*

[5] *Id.*

[6] *Id.* at 68-69.

[7] *Id.* at 68.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.* at 70-71.

[12] *Id.* at 69.

- [13] Id.
- [14] Id. at 26.
- [15] Id. at 74, 77.
- [16] NLRC RAB VI Case No. 06-02-10138-94.
- [17] Rollo, pp. 107-119.
- [18] NLRC RAB VI Case No. 06-04-10177-95.
- [19] Rollo, pp. 120-123.
- [20] Id. at 185-193, 195-196.
- [21] Id. at 198-204, 206-210.
- [22] Id. at 212-224.
- [23] Id. at 150-183. G.R. No. 146881.
- [24] Id. at 65-67.
- [25] Id. at 78-88.
- [26] Id. at 91-95.
- [27] Id. at 93. (Underscoring supplied.)
- [28] Id. at 97.
- [29] Id. at 100-106.
- [30] Id. at 61-62.
- [31] Id. at 144-149.
- [32] Id. at 64.
- [33] Id. at 35.
- [34] Id. at 8.
- [35] Id. at 8-9.
- [36] Pamaran, M.R., *The 1985 Rules on Criminal Procedure Annotated* (2001), pp. 153-154.
- [37] Rules of Court, Rule 111, Sec. 7.
- [38] *Flordelis v. Castillo*, G.R. No. L-36703, July 31, 1974, 58 SCRA 301, 305.
- [39] *Ocampo v. Buenaventura*, G.R. No. L-32293, January 24, 1974, 55 SCRA 267, 271.
- [40] 40 Phil. 837 (1920).
- [41] NLRC RAB VI Case No. 06-02-10138-94.
- [42] Rollo, pp. 107-119.
- [43] NLRC RAB VI Case No. 06-04-10177-95.

[44] Rollo, pp. 120-123.

[45] *People v. Aragon*, 94 Phil. 357 (1954).

[46] Rollo, pp. 9-10.

[47] *Maricalum Mining Corporation v. Drilon*, G.R. Nos. 157696-97, February 9, 2006, 482 SCRA 87, 106.

[48] *Abines v. Bank of the Philippine Islands*, G.R. No. 167900, February 13, 2006, 482 SCRA 421, 428.

[49] *Guevarra v. BPI Securities Corporation*, G.R. No. 159786, August 15, 2006, 498 SCRA 613, 638.

[50] G.R. No. 115849, January 24, 1996, 252 SCRA 259.

[51] *First Philippine International Bank v. Court of Appeals*, *id.* at 281-282.

[52] Rules of Court, Rule 7, Sec. 5.

[53] *Id.*

[54] *Maricalum Mining Corporation v. Drilon*, G.R. Nos. 157696-97, February 9, 2006, 482 SCRA 87, 105-106.

[55] *Guaranteed Hotels, Inc. v. Baltao*, G.R. No. 164338, January 17, 2005, 448 SCRA 738, 744; *Young v. Keng Seng*, G.R. No. 143464, March 5, 2003, 398 SCRA 629; *Philippine Nails and Wires Corporation v. Malaya Insurance Company, Inc.*, G.R. No. 143933, February 14, 2003, 397 SCRA 431.

[56] *Romero v. Tan*, G.R. No. 147570, February 27, 2004, 424 SCRA 108; *San Diego v. Cardona*, 70 Phil. 281 (1940). *Res judicata* was founded upon two (2) grounds in various maxims of the common law, namely: (1) public policy and necessity which makes it to the interest of the state that there should be an end to litigation, interest reipublicae ut sit finis litum; and (2) the hardship on the individual that he should be vexed twice for the same cause, *demo debet vexari et eadem causa*. (*Malayang Samahan ng Manggagawa sa Balanced Food v. Pinakamasarap Corporation*, G.R. No. 139068, January 16, 2004, 420 SCRA 84, 85, citing *Arenas v. Court of Appeals*, G.R. No. 126640, November 23, 2000, 345 SCRA 617)

[57] 1 Am. Jur., Sec. 97.

[58] Rollo, p. 13.

[59] *Olayvar v. Olayvar*, 98 Phil. 52 (1955); *Diana v. Batangas Transportation*, 93 Phil. 391 (1953); *Mid-Pasig Land Development Corporation v. Court of Appeals*, G.R. No. 153751, October 8, 2003, 413 SCRA 204; *Panganiban v. Pilipinas Shell Petroleum Corporation*, G.R. No. 131471, January 22, 2003, 395 SCRA 624.

[60] Section 1. Grounds. - Within the time for but before the filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

x x x x

(e) That there is another action pending between the parties pending between the same parties for the same cause. (Emphasis supplied)

[61] G.R. No. L-20408, April 27, 1967, 19 SCRA 848.

[62] *Solancio v. Ramos*, *id.* at 851.

[63] *Id.*

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