

**COLBY CONTRSRUCTION AND MANAGEMENT CORPORATION AND/OR
JAIME B. LO, PETITIONERS, VS. NATIONAL LABOR RELATIONS
COMMISSION, ANTONIO R. MACAM AND WILLY C. OLAGUER,
RESPONDENTS.**

G.R. No. 170099. November 28, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before this Court is the Petition for Review on Certiorari[1] under Rule 45 of the Revised Rules of Court filed by petitioners Colby Construction and Management Corporation (Colby Construction) and/or its President, Jaime B. Lo (Lo), seeking the reversal and the setting aside of the Decision[2] dated 22 March 2005 and the Resolution[3] dated 5 October 2005 of the Court of Appeals in CA-G.R. SP No. 59329. The appellate court, in its assailed Decision and Resolution, affirmed the Resolution dated 10 September 1999 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 020826-99 dismissing the petitioners' appeal for failure to perfect the same within the reglementary period.

The factual and procedural backdrop of the instant case are as follows:

Sometime in July 1991, private respondent Willy C. Olaguer (Olaguer) was employed by Colby Construction as a construction foreman with the salary of P150.00, plus a living allowance of P100.00 per day. Olaguer was tasked to oversee the various construction projects of the company.[4]

Eventually, Olaguer ventured into a sub-contracting business with Colby Construction wherein he submitted his bid to build a part of the company's construction project for a cost. Such sub-contracting business was carried out by Olaguer simultaneous with his job as a construction foreman.[5]

In 1996, Olaguer was awarded the CHB Layering and Plastering Project which costs P550,731.48. As a guarantee for the completion of the project, Olaguer was required to post a performance bond in the amount equivalent to 10% of the project cost or the sum of P55,073.14. After the project was completed, Colby Construction paid Olaguer the full amount of the project cost but refused to return the performance bond. When Olaguer persisted in demanding the return of the performance bond, Colby Construction, instead of complying with his demand, summarily dismissed Olaguer from his job as a construction foreman.[6]

Consequently, Olaguer filed a complaint for illegal dismissal against petitioners Colby Construction and/or Lo before the Labor Arbiter alleging that he was summarily dismissed from his work as a construction foreman without justifiable cause. He likewise claimed that Colby Construction refused to return the sum of his performance bond even after the project he undertook as a sub-contractor was faithfully completed. Olaguer thus prayed for reinstatement and backwages, and payment of P55,073.14, the sum of the unreturned performance bond.[7]

For failure of petitioners to file their Position Paper, the Labor Arbiter, in a Decision[8] dated 22 July 1999, ruled

in favor of Olaguer and declared that the latter was illegally dismissed from employment. The Labor Arbiter, however, refused to dispose of the issue of whether or not Olaguer was entitled to the sum of the purported performance bond, asserting that such matter properly rested within the jurisdiction of the regular courts. The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered, ordering [petitioners] to reinstate [Olaguer] to his former or equivalent position without loss of seniority rights, and to pay him full backwages from date of dismissal to actual reinstatement, hereunder computed as follows:

I. FULL BACKWAGES:

Backwages:

From March 1996 to July 22, 1999

= 3 yrs. 4 mos. & 22 days or 40.73 mos.

$P250.00 \times 40.73 = P264,745.00$

13th Month Pay:

From March to Dec. 31, 1996

= 9 mos. & 31 days or 10 mos.

$P250.00 \times 26 \times 10$

12 = P5,416.67

From Jan. to Dec. 31, 1997

= 12 mos.

$P250.00 \times 26 \times 12$

12 = P6,500.00

From Jan. to Dec. 31, 1998

= 12 mos.

$P250.00 \times 26 \times 12$

12 = P6,500.00

From Jan. to July 22, 1999

= 6 mos. & 22 days or 6.73 mos.

$P250.00 \times 26 \times 73$

12 = P2,916.33 21,333.00

Service Incentive Leave:

1996 = $P250.00 \times 5 \text{ days} = P1,250.00$

1997 = $P250.00 \times 5 \text{ days} = 1,250.00$

1998 = $P250.00 \times 5 \text{ days} = 1,250.00$ 3,730.00

TOTAL FULL BACKWAGES P289,828.00

Should reinstatement be not feasible, separation pay equivalent to one-half (1/2) month per year of service should be given instead under the following computation, to wit:

From July 1991 to July 22, 1999

= 8 years & 22 days or 8 yrs.

P250.00 x 26 x 8

2

P26,000.00

Aggrieved, petitioners appealed the foregoing decision before the NLRC. They primarily argued that when Olaguer ventured into a sub-contracting business with Colby Construction, his job as a construction foreman was effectively terminated, and an employer-employee relationship was therefore wanting in the instant case.[9] Petitioners asserted that it was because of their lawyer's negligence that they were not able to controvert Olaguer's allegation before the Labor Arbiter.

Controversy arose as to the timely perfection of the petitioners' appeal with the NLRC. As borne by the records, petitioners received a copy of the 22 July 1999 Labor Arbiter Decision on 13 August 1999.[10] Their Appeal Memorandum[11] was filed on 23 August 1999, but without their posting the necessary appeal bond set by the NLRC in the sum of P315,828,000.00. Instead, petitioners filed a Motion to Reduce Bond,[12] since there was a strong possibility of the reversal of the adverse Labor Arbiter Decision on appeal. Pending the resolution of petitioners' Motion to Reduce Bond, the reglementary period for perfecting an appeal lapsed on 23 August 1999. Nevertheless, petitioners posted an appeal bond in the sum of P100,000.00 on 27 August 1999.[13]

In a Resolution[14] dated 10 November 1999, the NLRC denied petitioners' Motion for Reduction of Bond and dismissed their appeal on the ground of non-perfection. The NLRC observed:

[Petitioners] claimed that they received a copy of the Labor Arbiter's decision on 13 August 1999. Thus, [petitioners] had only until August 23, 1999 to file and perfect their appeal. Records show that [petitioners], thru counsel, filed their Appeal Memorandum on August 23, 1999. Instead of posting a cash or surety bond, [petitioners] filed a Motion to Reduce Bond on the grounds that it is too costly and will entail unnecessary expense considering the strong possibility of a reversal of the appealed decision. The required appeal bond was filed only on August 27, 1999 or more than ten (10) days from receipt of the Decision.

x x x x

WHEREFORE, premises considered, the Motion to Reduce Bond is denied and the appeal is hereby dismissed for failure to perfect the same within the reglementary period set forth by law and the rules of the Commission.

Petitioners' Motion for Reconsideration was denied by the NLRC in its Resolution dated 3 May 2000.[15]

Petitioners elevated the matter to the Court of Appeals via a Petition for Certiorari[16] assailing the NLRC Resolution dated 10 November 1999 on the ground that the NLRC gravely abused its discretion in dismissing their appeal. Petitioners asserted that the NLRC failed to consider that they had filed an appeal bond for P100,000.00 even before their motion to reduce the same was resolved, thus, showing that there was no intention on their part to evade such requirement.[17]

On 22 March 2005, the Court of Appeals rendered a Decision affirming the NLRC Resolution dated 10 November 1999 and declaring therein that the NLRC did not gravely abuse its discretion in dismissing the petitioners'

appeal, thus:

WHEREFORE, finding no grave abuse of discretion on the part of respondent National Labor Relations Commission, the instant petition for certiorari is hereby DISMISSED for lack of merit. The assailed resolutions of the National Labor Relations Commission dated 10 November 1999 and 03 May 2000, respectively, are hereby AFFIRMED in toto.[18]

Similarly ill-fated was petitioners' Motion for Reconsideration which was denied by the Court of Appeals in a Resolution dated 5 October 2005.

Hence, petitioners filed this instant Petition for Review on Certiorari,[19] under Rule 45 of the Revised Rules of Court, challenging the Court of Appeals Decision and raising the sole issue of:

WHETHER OR NOT RESPONDENT COURT OF APPEALS ERRED IN COMPLETELY DISREGARDING THE TIMELY FILING OF THE PETITIONERS OF THE MOTION TO REDUCE BOND AS WELL AS THE SUBSTANTIAL COMPLIANCE OF THE PETITIONER WITH THE REQUIREMENTS FOR PERFECTING APPEAL BEFORE THE NLRC

Petitioners, in questioning the appellate court's ruling, call the attention of this Court to the so-called "utmost good faith" they demonstrated in initially posting an appeal bond while their Motion to Reduce the Bond was still pending consideration by the NLRC. In ignoring such material consideration, petitioners claim that the Court of Appeals committed grave abuse of discretion in issuing its Decision dated 22 March 2005 and Resolution dated 5 October 2005.

The petition is devoid of merit.

Time and again it has been held that the right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. The party who seeks to avail himself of the same must comply with the requirements of the rules. Failing to do so, the right to appeal is lost.[20]

Article 223 of the Labor Code, as amended, sets forth the rules on appeal from the Labor Arbiter's monetary award:

ART. 223. Appeal. – Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. x x x.

x x x x

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from. (Emphasis ours.)

Implementing the aforestated provisions of the Labor Code are the provisions of Rule VI of the New Rules of Procedure of the NLRC on perfection of appeals which read:

Section. 1. Periods of Appeal. - Decisions, awards or orders of the Labor Arbiter and the POEA Administrator shall be final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards or orders of the Labor Arbiter or of the Administrator, and in case of a decision of the Regional Director or his duly authorized Hearing Officer within five (5) calendar days from receipt of such decisions, awards or orders x x x.

Section 3. Requisites for Perfection of Appeal. – (a) The appeal shall be filed within the reglementary period as

provided in Sec. 1 of this Rule; shall be under oath with proof of payment of the required appeal fee and the posting of a cash or surety bond as provided in Sec. 5 of this Rule; shall be accompanied by a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof; the relief prayed for; and a statement of the date when the appellant received the appealed decision, order or award and proof of service on the other party of such appeal.

A mere notice of appeal without complying with the other requisite aforestated shall not stop the running of the period for perfecting an appeal.

Section 5. Appeal Fee. - The appellant shall pay an appeal fee of One hundred (P100.00) pesos to the Regional Arbitration Branch, Regional Office, or to the Philippine Overseas Employment Administration and the official receipt of such payment shall be attached to the records of the case.

Section 6. Bond. - In case the decision of the Labor Arbiter, the Regional Director or his duly authorized Hearing Officer involves a monetary award, an appeal by the employer shall be perfected only upon the posting of a cash or surety bond, which shall be in effect until final disposition of the case, issued by a reputable bonding company duly accredited by the Commission or the Supreme Court in an amount equivalent to the monetary award, exclusive of damages and attorney's fees.

x x x x

The Commission may, in justifiable cases and upon Motion of the Appellant, reduce the amount of the bond. The filing of the motion to reduce bond shall not stop the running of the period to perfect appeal.

Section 7. No extension of Period. - No motion or request for extension of the period within which to perfect an appeal shall be allowed. (Emphases ours.)

These statutory and regulatory provisions explicitly provide that an appeal from the Labor Arbiter to the NLRC must be perfected within ten calendar days from receipt of such decisions, awards or orders of the Labor Arbiter. In a judgment involving a monetary award, the appeal shall be perfected only upon (1) proof of payment of the required appeal fee; (2) posting of a cash or surety bond issued by a reputable bonding company; and (3) filing of a memorandum of appeal.

While the first and third requisites were satisfied by petitioners, they, however, failed to timely post an appeal bond. Although petitioners initially posted an appeal bond even before their Motion to Reduce Bond was resolved by the NLRC, it was in a much lower amount and posted beyond the ten-day reglementary period for perfection of the appeal. Petitioners now plead for the liberal interpretation of the rule on appeal bond so that the merits of their case can be threshed out, insisting that there was substantial compliance therewith and utmost good faith on their part.

It is clear from both the Labor Code and the NLRC Rules of Procedure that there is legislative and administrative intent to strictly apply the appeal bond requirement, and the Court should give utmost regard to this intention.[21] A mere notice of appeal without complying with the other requisites mentioned shall not stop the running of the period for perfection of appeal. The posting of cash or surety bond is not only mandatory but jurisdictional as well, and non-compliance therewith is fatal and has the effect of rendering the judgment final and executory.[22]

The indispensability of the requirement on appeal bond has long been settled in *Viron Garments Mfg. Co., Inc. v. National Labor Relations Commission*,[23] where this Court made the following pronouncement:

The intention of the lawmakers to make the bond an indispensable requisite for the perfection of an appeal by the employer, is clearly limned in the provision that an appeal by the employer may be perfected "only upon the posting of a cash or surety bond." The word "only" makes it perfectly clear, that the lawmakers intended the posting of a cash or surety bond by the employer to be the exclusive means by which an employer's appeal

may be perfected.

The word “may” refers to the perfection of an appeal as optional on the part of the defeated party, but not to the posting of an appeal bond, if he desires to appeal.”

Rules on perfection of an appeal, particularly in labor cases, must be strictly construed because to extend the period of the appeal is to delay the case, a circumstance which would give the employer the chance to wear out the efforts and meager resources of the worker to the point that the latter is constrained to give up for less than what is due him.[24] As ratiocinated in *Coral Point Development Corporation v. National Labor Relations Commission*[25]:

This is to assure the workers that if they finally prevail in the case the monetary award will be given to them upon dismissal of the employer’s appeal. It is further meant to discourage employers from using the appeal to delay or evade payment of their obligations to the employees.

It is undisputed that, in the case at bar, petitioners posted a sparse bond beyond the ten-day reglementary period. Petitioners received a copy of the Labor Arbiter Decision on 13 August 1999, and had only until 23 August 1999 to perfect their appeal. Although petitioners’ Appeal Memorandum was timely filed on 23 August 1999, their appeal bond was filed four days late on 27 August 1999. Hence, no appeal was perfected. Resultantly, the Labor Arbiter Decision dated 22 July 1999 already became final and executory on 23 August 1999.

Such settled procedural antecedents notwithstanding, petitioners still strongly posit that their appeal before the NLRC should not be dismissed, since they have filed a Motion to Reduce the Appeal Bond together with their Appeal Memorandum; and despite the belated resolution of the said motion, petitioners, on their own volition, initially posted an appeal bond, which only shows that there was no intent on their part to evade liability.

We are not persuaded.

It bears to emphasize that the appeal of a decision involving the monetary award in labor cases may be perfected only upon posting of a cash or surety bond.[26] Nowhere in the Labor Code or in the NLRC Rules of Procedure can we find that the filing of a motion to reduce the appeal bond stays the finality of a decision. On the contrary, Section 6, Rule VI of the New NLRC Rules of Procedure explicitly states that “the filing of the motion to reduce bond shall not stop the running of the period to perfect appeal.” It is a well-settled rule in statutory construction that when the law is clear, it leaves no room for interpretation.[27]

Moreover, the alleged substantial compliance by petitioners by belatedly posting a bond in the unapproved reduced amount has been rejected by this Court in *Computer Innovations Center v. National Labor Relations Commission*,[28] thus:

It is clear from both the Labor Code and the NLRC Rules of Procedure that there is legislative and administrative intent to strictly apply the appeal bond requirement, and the Court should give utmost regard to this intention. There is a concession to the employer, in excluding damages and attorney’s fees from the computation of the appeal bond. Not even the filing of a motion to reduce bond is deemed to stay the period for requiring an appeal. Nothing in the Labor Code or the NLRC Rules of Procedure authorizes the posting of a bond that is less than the monetary award in the judgment, or would deem such insufficient postage as sufficient to perfect the appeal.

On the other hand, Article 223 indubitably requires that the appeal be perfected only upon the posting of the cash or surety bond which is equivalent to the monetary award in the judgment appealed from. The clear intent of both statutory and procedural law is to require the employer to post a cash or surety bond securing the full amount of the monetary award within the ten (10)-day reglementary period. While the bond may be reduced upon motion by the employer, there is that proviso in Rule VI, Section [6] that the filing of such motion does

not stay the reglementary period. The qualification effectively requires that unless the NLRC grants the reduction of the cash bond within the ten (10)-day reglementary period, the employer is still expected to post the cash or surety bond securing the full amount within the said ten (10)-day period. If the NLRC does eventually grant the motion for reduction after the reglementary period has elapsed, the correct relief would be to reduce the cash or surety bond already posted by the employer within the ten (10)-day period. (Emphases ours.)

Evidently, an employer who files a motion to reduce the appeal bond is still required to post the full amount of cash or surety bond within the ten-day reglementary period, even pending resolution of his motion. In this case, not only did petitioners fail to post the full amount of appeal bond, but their posting of the unapproved appeal bond was made four days after the ten-day reglementary period for perfection of the appeal had already lapsed.

Petitioners' theory of substantial compliance totally transgresses the basic principle that the finality of a decision is a jurisdictional event that cannot be made to depend on the convenience of the party. To allow the party to determine at his discretion when to post an appeal bond, which is a necessary requisite in the perfection of an appeal, would in effect, unduly delay the running of the period for a decision to attain its finality, thereby completely negating the purpose of the rule on the completeness of service, which is to place the date of receipt of pleadings, judgments and processes beyond the power of the party being served to determine at his pleasure.[29]

While the bond requirement on appeals involving a monetary award has been relaxed in certain cases, this can only be done where there was substantial compliance with the Rules; or where the appellants, at the very least, exhibited willingness to pay by posting a partial bond.[30]

Thus, petitioners' reliance on *Rosewood Processing, Inc. v. NLRC*,^[31] *YBL (Your Bus Line) v. National Labor Relations Commission*,^[32] *Nationwide Security and Allied Services, Inc. v. National Labor Relations Commission*,^[33] *MERS Shoes Manufacturing, Inc. v. National Labor Relations Commission*,^[34] and *Star Angel Handicraft v. National Labor Relations Commission*,^[35] is misplaced, if not totally misleading. The factual milieu of the said cases is entirely different in the case at bar, and does not bear even a sheer of semblance that would dissuade this Court from relaxing the rules.

In *Rosewood*, the petitioner in the said case substantially complied with the rules by posting a partial surety bond of P50,000.00 issued by Prudential Guarantee and Assurance, Inc. within the ten-day reglementary period, and while his motion to reduce appeal bond was pending before the NLRC. In the case at bar, the initial posting of an appeal bond was made after the lapse of the period prescribed for perfecting an appeal.

In *YBL*, the Labor Arbiter Decision therein enumerated the requirements of an appeal without mentioning the appeal bond. The counsel for the parties was also not aware of the new mandatory requirement of an appeal bond. The Labor Arbiter Decision further failed to state the amount of separation pay awarded; thus, there was no basis to compute the amount of the appeal bond.[36] In contrast, by the time the petitioners filed their appeal with the NLRC, the mandatory and jurisdictional requirement of posting an appeal bond was already well-settled in both law and jurisprudence. In addition, the Labor Arbiter Decision in the present case states not only the total amount of backwages awarded, but also the detailed computation thereof.

Petitioners' invocation of *Nationwide Security* and *MERS* is deceptive. In *Nationwide Security*, therein petitioner timely file a Motion to Reduce Bond and a Memorandum of Appeal but was not able to post an appeal bond on the ground that petitioner could not afford to post the amount required. Likewise in *MERS*, therein petitioner timely filed a Memorandum of Appeal and a Motion to Reduce Bond, which was granted by the NLRC. In the Resolution granting its motion, the NLRC ordered therein petitioner to post a cash or surety bond within ten days from the receipt of the said Order but petitioner failed to comply therewith. In both cases, we actually affirmed the

NLRC in dismissing the appeal of therein petitioners on the ground of non-perfection. Petitioners' reference to said cases actually weakens their position. The practice of parties to strip the cases of one or two significant lines to boost their stance and make it appear that their positions are clothed with jurisprudential blessing cannot be condoned and must necessarily be struck down by this Court.

Finally, our ruling in *Star Angel* has already been overturned by *Computer Innovations* in this wise:

The distinction, if any, is not particularly evident or material in the Labor Code; hence, the reluctance of the Court to adopt such doctrine. Moreover, the present provision in the NLRC Rules of Procedure, that "the filing of a motion to reduce bond shall not stop the running of the period to perfect appeal" flatly contradicts the notion expressed in *Star Angel* that there is a distinction between filing an appeal and perfecting an appeal.

Ultimately, the disposition of *Star Angel* was premised on the ruling that a motion for reduction of the appeal bond necessarily stays the period for perfecting the appeal, and that the employer cannot be expected to perfect the appeal by posting the proper bond until such time the said motion for reduction is resolved. The unduly stretched-out distinction between the period to file an appeal and to perfect an appeal was not material to the resolution of *Star Angel*, and thus could properly be considered as obiter dictum.[37] (Emphasis ours.)

Clearly, *Star Angel* can no longer buttress petitioners' prayer for a liberal interpretation of the rule on the posting of an appeal bond.

Verily, we relax procedural rules in some cases to serve the ends of justice. Such exceptions, however, should not be overstretched, lest we contravene the words and the spirit of our labor laws on the perfection of appeals and posting of appeal bonds. The underlying purpose of the appeal bond is to ensure that the employee has properties upon which he or she can execute upon in the event of a final, providential award. The non-payment or woefully insufficient payment of the appeal bond by the employer frustrates these ends.[38] The appeal bond requirement precisely aims to prevent empty or inconsequential victories secured by laborers in consonance with the protection of the labor clause ensconced in and zealously guarded by our Constitution.

WHEREFORE, premises considered, the instant Petition is DENIED. The Court of Appeals Decision dated 22 March 2005 and its Resolution dated 5 October 2005 in CA-G.R. CV No. 59329 are hereby AFFIRMED. Costs against the petitioners.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Id. at 8-21.

[2] Penned by Associate Justice Regalado Maambong with Associate Justices Martin S. Villarama, Jr. and Lucenito N. Tagle, concurring. Rollo, pp. 78-93.

[3] Id. at 102-103.

[4] Id. at 21.

[5] Id. at 26.

[6] Id.

[7] Id. at 22-24.

[8] Id. at 25-30.

[9] Id. at 32-38.

[10] Id. at 51.

[11] Id. at 32-42.

[12] Id. at 30-31.

[13] Id. at 43-48.

[14] Id. at 49-54.

[15] Id. at 60.

[16] Id. at 61-77.

[17] Id.

[18] Id. at 93.

[19] Id. at 10-21.

[20] Ong v. Court of Appeals, G.R. No. 152494, 22 September 2004, 438 SCRA 668, 673.

[21] Computer Innovations Center v. National Labor Relations Commission, G.R. No. 152410, 29 July 2005, 462 SCRA 183, 190.

[22] Ong v. Court of Appeals, *supra* note 20.

[23] G.R. No. 97357, 18 March 1992, 207 SCRA 339, 342.

[24] Borja Estate v. Ballard, G.R. No. 152550, 8 June 2005, 459 SCRA 657, 668.

[25] 383 Phil. 456, 463-464 (2000).

[26] Rosewood Processing, Inc. v. National Labor Relations Commission, 352 Phil. 1013, 1029 (1998).

[27] Viron Garments Mfg. Co., Inc. v. National Labor Relations Commission, *supra* note 23.

[28] *Supra* note 21 at 190-191.

[29] Saccalan v. Court of Appeals, G.R. No. 128967, 20 May 2004, 428 SCRA 586, 599.

[30] Gensoli v. National Labor Relations Commission, 352 Phil. 232, 239 (1998).

[31] *Supra* note 26.

[32] G.R. No. 93381, 23 September 1990, 190 SCRA 160.

[33] 341 Phil. 393 (1997).

[34] 350 Phil. 295 (1998).

[35] G.R. NO. 108914, 20 September 1994, 236 SCRA 581.

[36] Nationwide Security and Allied Services, Inc. v. National Labor Relations Commission, *supra* note 33 at 402-403.

[37] Computer Innovations Center v. National Labor Relations Commission, *supra* note 21 at 192-193.

[38] Id. at 195.

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