

**THE BACOLOD-MURCIA MILLING CO., INC., PLAINTIFF-APPELLANT,
VS. BANCO NACIONAL FILIPINO ET AL., DEFENDANTS. BANCO
NACIONAL FILIPINO AND FERNANDO F. GONZAGA,
DEFENDANTS-APPELLANTS.**

G.R. No. 47610. July 17, 1944

Ponente: OZAETA, J.

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OZAETA, J.:

Appeal from the Court of First Instance of Occidental Negros forwarded by the latter directly to this Court upon the sworn statement of the appellant Fernando F. Gonzaga that the value of the property in controversy exceeds P50,000.

The action was instituted by the plaintiff to compel the defendant Philippine National Bank to sell to the former twelve hectares of the Hacienda Helvetia consisting of lot 1072-B and a portion of lot 1072-C-3 of the Bacolod cadastre at the price of P300 per hectare, and to declare that the defendants Jose de la Rama and Fernando F. Gonzaga have no right to oppose the sale. The trial court granted the relief prayed for but fixed the price at P1,500 per hectare. Both parties appealed.

The hacienda Helvetia originally belonged to the defendant Jose de la Rama. Shortly after the organization in 1919 of the sugar central, The Bacolod-Murcia Milling Co., Inc., that is to say, on September 30, 1920, Jose de la Rama along with other sugar planters entered into a milling contract with the said corporation (exhibit B) in which among other things it was stipulated:

"9. Que con el fin de que el Molino pueda llevar a cabo las empresas arriba mencionadas, los Plantadores individual y colectivamente, facilitaran, o haran que se obtenga y facilite al Molino, mediante pago a razon de tres cientos pesos (P300) por hectarea, libre de gravamen, todos los terrenos que el Molino requiera para la estacion experimental de una extension no mayor de 10 hectareas, para el sitio de la Central, bodegas, depositos, almacenes, y otros edificios, para la estacion, y patios del ferrocarril * * *"

Subsequently Jose de la Rama sold and transferred the said hacienda to the Philippine National Bank, which on August 20, 1936, executed an amended milling contract (exhibit C) with the Bacolod-Murcia Milling Co., Inc., in which paragraph 9 above quoted of the original milling contract exhibit B was incorporated. Both the original and the amended milling contracts were recorded and annotated on the back of the certificate of title as an incumbrance on the said hacienda.

On October 18, 1932, a written contract (exhibit E) was entered into between the Philippine National Bank and Jose de la Rama whereby the former agreed to resell the said hacienda to the latter for P1 68,143.80, payable by instalments in fifteen years.

The rights and interests of Jose de la Rama in and to said hacienda having been levied upon and sold by the sheriff. at public auction at the instance of certain judgment creditors of de la Rama, the latter on different dates

entered into separate contracts with the Bacolod-Murcia Milling Co., Inc., and Fernando F. Gonzaga by virtue of which the rights and interests of De la Rama in said hacienda were redeemed from his execution creditors; and ultimately Fernando F. Gonzaga by successive and separate contracts with Jose de la Rama, the Bacolod-Murcia Milling Co., Inc., and the Philippine National Bank (the last contract with the latter having been executed after the commencement of this action) acquired full dominion over the hacienda in question; in other words, the title thereto was consolidated in him alone.

By the contract exhibit K dated January 28, 1937, between Jose de la Rama and the Bacolod-Murcia Milling Co., Inc., the latter granted to the former the right to redeem from it his rights to and interests in said hacienda within seven months from July 1, 1937, at the price therein stipulated, upon certain conditions among which was the following :

"7.o—Queda convenido y pactado entre las partes como una de las condiciones esenciales de este contrato que la Bacolod-Murcia Milling Co., Inc. tendra derecho para gestionar del Banco Nacional Filipino la compra, y comprar unas 12 hectareas, poco mas o menos, de terreno de la hacienda 'Helvetia' que seran designadas por la Bacolod- Murcia Milling Co., Inc. y se tomaran del terreno de dicha hacienda que linda por el Este y Nordeste con los terrenos de la propiedad de la Barcolod-Murcia Milling Co., Inc., a cuyo efecto Jose de la Rama, sus herederos y causahabientes, por el presente hacen constar que dan su conforimdad a que el Banco Nacional Filipino verifique dicha venta y que esas 12 hectareas, poco mas o menos, de terreno se excluyan de la escritura de promesa de venta de la hacienda 'Helvetia' que el Banco Nacional Filipino ha otorgado a su favor."

In the contract exhibit O dated February 23, 1937, between Jose de la Rama and Fernando F. Gonzaga, the former ceded and transferred to the latter his right to repurchase the hacienda in question from the Philippine National Bank as well as his right to redeem the rights and interests acquired therein by the Bacolod-Murcia Milling Co.; and in said contract it was also stipulated by and between the parties as follows:

"(g)—Que habiendose en la escritura copiada arriba comprometido el Sr. De la Rama para que la Bacolod-Murcia Milling Co., Inc. pueda gestionar del Banco Nacional Filipino la compra y pueda comprar unas doce hectareas de terreno en la hacienda 'Helvetia', el Sr. Gonzaga respeta ese compromiso y consentira en que la Bacolod-Murcia Milling Co., Inc. compre dicha extension de terreno." (Clausula 5.)

On March 9, 1937, the plaintiff wrote to the defendant Philippine National Bank as follows:

"The Bacolod-Murcia Milling Co., Inc., desires to buy 12 hectares, more or less, of the land of hacienda 'Helvetia,' bounding by the North and Northeast with the property of the Bacolod-Murcia Milling Co., Inc., in order to build houses for its laborers, and does hereby make an offer to buy from the Bank the above-mentioned 12 hectares of land, more or less, at the price of P500 per hectare." (Exhibit S.)

Subsequent to that letter, verbal, telegraphic, and written negotiations were made by the plaintiff with the Bank for the purchase of the twelve hectares in question. The good offices and favorable intervention of Messrs. Roman Lacson, Jorge B. Vargas, and Vicente Carmona were solicited by the plaintiff. In one of the telegrams, that dated at Bacolbd April 16, 1937, and addressed to Mr. Carmona, the plaintiff reiterated its offer to buy and stated that it was disposed to pay a reasonable price. In the letter dated April 17, 1937, addressed by Mr. Claro M. Recto as attorney for the plaintiff to Mr. Vicente Carmona as president of the Bank, it was represented among other things that:

"It is true that no price was expressly fixed by Mr. De la Rama and the Bacolod-Murcia Milling Co., Inc. for the sale of said 12 hectares of land, but this merely goes to show that the intention of the parties was to leave the determination of the selling price of said 12 hectares of land to the sound judgment of the bank, and it could not be otherwise because the authority to sell granted to the Bank implied the authority to fix the price of the sale. * * *" (Exhibit 4-Bank; italics supplied.)

On April 17, 1937, the Bank, thru Mr. Roman J. Lacson, telegraphed to the plaintiff thru its attorney, Mr. Ricardo Nolan, that it was disposed to sell twelve hectares to the Central provided the Central, Gonzaga, and de la Rama agreed as to the price and provided that the Central guaranteed to the Bank the payment by de la Rama and Gonzaga of the total purchase price of the Hacienda Helvetia (exhibit W). On April 19 Mr. Nolan replied to Mr. Lacson's telegram stating that he would communicate to the board of directors of the Bacolod-Murcia Milling Co. the conditions required by the Bank (exhibit 6).

The negotiations for the purchase having failed, the plaintiff commenced this action on June 9, 1937, for the purpose above indicated. Subsequent to the commencement of the action, that is to say, on June 24, 1937, the Bank conveyed the Hacienda Helvetia to the defendant Fernando F. Gonzaga subject to the result of this case.

The theory of the plaintiff is that, under paragraph 9 of the milling contract above quoted, the defendants are obligated to sell to it the twelve hectares in question at P300 per hectare. The defendants on the other hand contend that the said stipulation of the milling contract regarding the purchase by the Central of a portion of the land of the planter at P300 per hectare for any one of the purposes mentioned in said contract cannot be invoked by the plaintiff because the latter is not seeking to purchase the twelve hectares in question "in order that the Central may carry into effect the enterprises above mentioned" (which according to the defendants have already been accomplished, nor is the purpose to which the plaintiff will devote the said twelve hectares one of those mentioned in said stipulation. The plaintiff replies that the defendant Fernando F. Gonzaga is estopped by paragraph 7 of the contract of January 28, 1937, and paragraph 5(g) of the contract of February 23, 1937 (both hereinbefore quoted), from opposing the sale by the Bank to the plaintiff of the land in question, and has no right to raise any question as to whether or not the plaintiff needs the said land and the use to which it will devote the same. The trial court in effect adopted a middle ground by holding that the plaintiff has the right to compel the defendants to sell the twelve hectares in question at a reasonable price which it found to be P1,500 per hectare.

In an action for specific performance like the present, the terms and conditions of the contract sought to be enforced must be adhered to, and the court is not empowered to alter them or to prescribe any other condition not previously agreed to by the parties. "It is not the province of the court to alter a contract by construction or to make a new contract for the parties; its duty is confined to the interpretation of the one which they have made for themselves, without regard to its wisdom or folly, as the court cannot supply material stipulations or read into the contract words which it does not contain." (13 C.J., 525) If the case falls within paragraph 9 of the milling contract, as contended by the plaintiff, the sale must be enjoined at the price of P300 per hectare therein fixed; but if the case does not fall within said clause, as contended by the defendants, the action for specific performance must necessarily fail.

There are various established facts and circumstances that in our opinion militate against and destroy plaintiff's pretensions;

- At the time the plaintiff began to negotiate, for the purchase of the land in question, the Central had been in operation for more than sixteen years, had reached the peak of production, and was on the downgrade of its existence due to the imposition of the sugar limitation since the agricultural year 1934-1935. Its production commenced with 89,240 piculs of sugar in the agricultural year 1920-1921, rose to 998,190 piculs in the agricultural year 1933-1934, and dropped to 441,309 piculs in the following agricultural year, according to the evidence adduced by the plaintiff itself (page 89, t. s. n.). During the first seventeen years of its existence (the milling contract is for thirty years only) the plaintiff has carried out the enterprises referred to in clause 9 of the milling contract, namely; the construction of a complete, first-class, modern sugar central; the construction of sufficient warehouses; the construction of a wharf; the construction of a system of railways and telephone lines; the installation of an ice plant; and the construction of a number of houses for its employees and laborers.

- The blue print plan exhibit R, which was prepared for the plaintiff by its surveyor Manuel Bumaad after the commencement of this case, shows that more than six hectares of the land the plaintiff seeks to buy is destined for "Golf Course & Athletic Game Fields" and the rest is marked "Proposed Laborers' Houses." The evidence shows, however, that adjoining the land in question the plaintiff owns vacant land of about the same area as that for the "Proposed Laborers' Houses" and which the plaintiff could, if it wished to, devote to the building of laborers' houses. (See photographs exhibits 31, 30, and 29 and testimony of Fidel Palermo, and exhibit R and testimony of Teofilo Piña in relation thereto.) The same plan exhibit R shows that the plaintiff has a barrio obrero where it has constructed houses for its laborers, with a plaza, playground, and baseball ground (testimony of Bumaad, pp. 38-40, t.s.n.).

- The very insertion in exhibit K of clause 7 hereinbefore quoted, whereby the plaintiff was given by the defendant Jose de la Rama the right to negotiate with the Philippine National Bank for the purchase of the twelve hectares in question, and the subsequent negotiations made by the plaintiff with said Bank in accordance with said stipulation, are incompatible with the theory of specific performance based on clause 9 of the milling contract. For if the plaintiff had the right under said clause 9 of the milling contract to purchase twelve hectares of the Hacienda Helvetia, there would have been no necessity for clause 7 of exhibit K; and the plaintiff, instead of endeavoring to persuade the Bank to sell said twelve hectares to it at P500 per hectare or at any other reasonable price that the Bank might fix, would have simply invoked said clause 9 of the milling contract by tendering the price of P300 per hectare and demanding the execution of the corresponding deed of sale. Not only the Bank but any other person or entity claiming any interest in said hacienda was bound by the said milling contract, which was noted on the back of the certificate of title as an incumbrance thereon. It is apparent that the invocation by the plaintiff of the milling contract after the negotiations had failed was an eleventh-hour afterthought.

In the light of the foregoing facts and circumstances and of the wording itself of clause 9 of the milling contract, we are clearly of the opinion that neither the Philippine National Bank nor its successor Fernando F. Gonzaga is under obligation to sell to the plaintiff the twelve hectares in question at P300 per hectare. Insofar as a portion of said land is intended and used by the plaintiff for a golf course, no attempt is made on its behalf to show that such use is within the purview of clause 9 of the milling contract. And insofar as the rest is intended for building additional houses for laborers, we have seen that the plaintiff has sufficient vacant land for that purpose in the same locality so that even assuming that the laborers' houses are comprehended within the phrase "otros edificios" contained in clause 9, there is no necessity for the plaintiff to acquire any portion of the land in question "con el fin de que el Molino pueda llevar a cabo las empresas arriba mencionadas." It was only with that end in view that the planter agreed to sell any portion of his land to the Central at P300 per hectare as part of the consideration of the milling contract; and if the plaintiff wants to acquire land for a golf course or for any other purpose than that necessary to enable it to carry, into effect the enterprises specified in the milling contract, it must do so by a new contract and pay the price agreeable to the owner. According to the evidence adduced by the defendant Fernando F. Gonzaga, the land in question as urban property is worth at least P1 per square meter, or P10,000 per hectare, which the plaintiff is not disposed to pay.

Referring to the new needs of the Central, and in attempting to read them into clause 9 of the milling contract, the trial court said:

"Quizas al establecerse la central estas necesidades no se habian previsto, y a la verdad no se podia pensar en ellas dada la vida incipiente del negocio y su estado economico mas bien precario, pero su expansion, su desarrollo y sus logros han engendrado nuevas necesidades no menos perentorias y esenciales para su funcionamiento y existencia que son las de hacer participes a sus obreros en la mejor forma que crea de los beneficios y ganancias que se deriven del negocio de la central que es el efecto o producto de su aportacion en forma de trabajo con el capital de la citada central."

That, in our opinion, is untenable upon both factual and legal grounds. The amended milling contract exhibit C was entered into between the plaintiff and the Philippine National Bank on August 20, 1936, more than sixteen years after the Central was organized and less than one year before the negotiations were made by the plaintiff with the Bank for the purchase of the land in question. At that time the new needs of the Central, if any, must have been felt or at least reasonably foreseen. Yet clause 9 of the original milling contract was not altered in the amended contract to include such needs. Article 1283 of the Civil Code expressly provides:

"However general the terms of a contract may be, it shall not be construed as including things and cases different from those with respect to which the persons interested intended to contract."

This provision was infringed by the trial court when it read into the milling: contract things and cases not therein included and which the contracting parties admittedly had not even foreseen or thought of. (*City of Manila vs. Rizal Park Co.*, 53 Phil., 515.)

It would be laudable if the plaintiff, as the trial court believed, wished to make its laborers participate "in the benefits and profits derived from the business of the Central," but it would be neither just nor lawful to compel the Bank or its successor, defendant Gonzaga, to bear the burden of plaintiff's proposed laudable undertaking. The plaintiff that has made and received the profits and that feels obligated towards its laborers, if it wishes to provide a golf course and athletic game fields for its employees and laborers and to acquire more land purportedly for the building of additional laborers' houses instead of using the vacant land it already has for that purpose, should pay the price demanded by the owner instead of forcing the latter against his will to sell the necessary land at a price (P300 per hectare) which the plaintiff itself recognized to be unreasonably low when at the beginning of the negotiation it offered to pay P500 per hectare and which the trial court raised to P1,500 per hectare.

Our conclusion from all the foregoing is, that since this case is not comprehended within clause 9 of the milling contract, there is no perfected and binding contract to sell the land in question to the plaintiff. Hence plaintiff's action for specific performance cannot be sustained.

In the thirteenth assignment of error of the appellant Fernando F. Gonzaga, the latter contends that the trial court erred in not sustaining his cross-complaint against the plaintiff for the return of lot 1072-B-2 to him. Said lot, marked on the plan exhibit R "Golf Course & Athletic Game Fields," was loaned gratuitously by the defendant Gonzaga, when he was the lessee of the "Hacienda Helvetia", to the plaintiff to be used for the exercises of its organization known as National Volunteers, with the understanding that the same was to be returned when Gonzaga needed it. The trial court refused to entertain Gonzaga's cross-complaint in view of its judgment ordering the conveyance of the land in question to the plaintiff. The reversal of that judgment would necessarily carry with it the granting of the said cross-complaint.

The judgment appealed from is reversed, the defendants are absolved from plaintiff's complaint, and the plaintiff is hereby ordered to return to the defendant Fernando F. Gonzaga lot 1072-B-2 of the Bacolod cadastre, and to pay the costs in both instances.

Moran, Horrilleno, and Generoso, JJ., concur.

DISSENTING

PARAS, J.,

Since its organization in 1919 until 1936, the plaintiff (Bacolod-Murcia, Milling Co., Inc.) had been indebted to the Philippine National Bank in an amount reaching P1 2,000,000. Due to this indebtedness the latter consistently prevented the plaintiff from making, during said period, projected improvements that were not urgent. Upon the payment of its obligation in 1936, the plaintiff renewed its decision to construct additional houses for laborers and a playground. For these improvements, the plaintiff needed twelve hectares of land, and the area selected adjoins the milling site and other buildings of the plaintiff and forms part of Hacienda Helvetia originally belonging to Jose de la Rama and leased by the latter to Fernando F. Gonzaga for some time. During this lease, however, the plaintiff was able to use the said area for athletic events and for various activities of national volunteers, and Gonzaga consented to such use because he did not actually put the land under cultivation.

Starting with a milling capacity of 500 tons a day, the plaintiff had a daily output of 3,500 tons in 1936. However, in view of the sugar limitation, its production was thereafter somewhat lessened, although it did not reduce the number of its officials, employees and laborers.

The Philippine National Bank subsequently bought Hacienda Helvetia from its former owner (De la Rama) who later conveyed his right to repurchase to Fernando F. Gonzaga. At the time the bank became the owner of the hacienda, it entered into a milling contract with the plaintiff whereby it was agreed that:

"9. Que con el fin de que el Molino pueda llevar a cabo las empresas arriba mencionadas, los plantadores individual y colectivamente, facilitaran, p haran que se obtenga y f acilite el Molino, mediante pago a razon de tres cientos pesos (P300) por hectarea, libre de gravamen, todos los terrenos que el Molino requiera para la estacion experimental de una extension no mayor de 10 hectareas, para el sitio de la Central, bodegas, depositos, almacenes, y otros edificios, para la estacion, y patios del f errocarril . . ."

The foregoing stipulation was a mere reproduction of clause 9 of the original milling contract between the plaintiff and De la Rama. On January 28, 1937, the latter executed a contract whereby it was agreed between him and the plaintiff that the "Bacolod-Murcia Milling Co., Inc. tendra derecho para gestionar del Banco Nacional Filipino la compra, y comprar unas 12 hectareas, poco mas o menos, de terreno de la hacienda 'Helvetia' que seran designadas por la Bacolod-Murcia Milling Co., Inc." and that "Jose de la Rama, sus herederos y causahabientes, por el presente hacen constar quedari su conformidad a que el Banco Nacional Filipino verifique dicha venta y que esas 12 hectareas, poco mas o menos, de terreno se excluyan de la escritura de promesa de venta de la hacienda 'Helvetia' que el Banco Nacional Filipino ha otorgado a su favor." Upon the other hand, in the contract between De la Rama and Gonzaga dated February 23, 1937, it was covenanted that "habiendose en la escritura copiada arriba cornprometido al Sr. De la Rama para que la Bacolod-Murcia Milling Co., Inc. pueda gestionar del Banco Nacional Filipino la compra y pueda comprar unas doce hectareas de terreno en la hacienda 'Helvetia', el Sr. Qonzaga respeta ese compromiso y consentira en que la Bacolod-Murcia Milling Co., Inc. compre dicha extension de terreno."

Upon the circumstances of this case, I favor a construction of clause 9 of the milling contract that recognizes the plaintiff's right to purchase the land in question. De la Rama and Gorizaga, already aware of said right, have in their respective contracts of January 28, 1937, and February 23, 1937, given their consent to the acquisition by the plaintiff of said land. The bank neither has justification in objecting, since it promised to agree to the transfer provided De la Rama and Gonzaga would, on their part, conform. The only visible reason why Gonzaga now tries to back out and to repudiate his engagement, is readily found in the fact that the market price of the land in question had considerably increased due to the establishment of subdivisions in its vicinity as a result of the inclusion within the new City of Bacolod of a portion of Hacienda Helvetia. In his testimony Gonzaga claims that the land is worth P1.00, and even P4.00 per square meter. To allow Gonzaga a minimum price of P1.00 per square

meter—and this is virtually his position in the case at bar—is to give him the benefit of recovering almost the price that he paid to the bank for the whole hacienda and still owning hundreds of hectares. Such result, though apparently legitimate, is in the present case, shocking to the conscience. I hate to believe that the bank would align with Gonzaga in his speculative scheme.

I am quite sure that in executing his contract of February 23, 1937, Gonzaga intended to acknowledge plaintiff's right under clause 9, because the latter was and is now by law vested with the power of eminent domain upon which it could base its demand to be allowed to acquire the land in question. In this connection the majority are puzzled to think why, if the plaintiff really relied upon the milling contract, it still had to make negotiations for the purchase (gestion). There is nothing unusual in the procedure followed by the plaintiff. Neither does it reflect any inconsistency. Usually, people do not want to spend time and money in court if they can help it. Even the Government and corporations empowered to expropriate property first resort to extrajudicial negotiations before relying on their legal right. That the plaintiff in fact invoked its milling contract, is proven by the uncontradicted testimony of Generoso Villanueva to the effect that he and Mr. Mapa went to the manager of the bank and proposed to buy the land in question at P300 per hectare in conformity with the milling agreement.

At the time the plaintiff entered into its original milling contract in 1919, it might not have in mind that the purposes for which the improvements are to be made, were included within the terms of clause 9; but when it executed a new milling contract with the bank after the latter had acquired Hacienda Helvetia, the parties can certainly be assumed to have intended to include these purposes, particularly because the plaintiff had long before planned to introduce said improvements which were, however, not allowed by the bank. I do not accept the allegation that the plaintiff had already carried out the enterprises referred to in clause 9 of the milling contract during the first seventeen years of its existence, in so far as the majority thereby mean to suggest that the plaintiff can no longer invoke said clause. The allegation is flatly refuted by the insertion of the same stipulation in the new milling agreement entered with the bank on August 20, 1936, from which the logical inference may be drawn that the parties contemplated its future application to such new needs as those requiring the land in question.

It is also suggested that the plaintiff already has a barrio obrero, as well as a vacant lot on which it can build the desired additional houses for laborers. A more careful examination of the evidence will show that the said vacant lot is the school site of the plaintiff, while the actual barrio obrero is not enough to accommodate all the laborers, it appearing that as many as five or six families live in one house and others live outside or in the poblacion. Moreover, the trial Judge made an ocular inspection of the place, and his finding as to the necessity for additional laborers' quarters deserves full credit.

In the light of progressive ideas generally accepted nowadays, when capital and labor stand on an equal footing, dignity and importance, and the laborers are no longer considered as mere tools for the promotion of the interests of their employers but as the latter's indispensable partners in the production of wealth in which the laborers are allowed to share in a proportion sufficient to provide them not only with bare subsistence but with comparative ease and comfort, I am even more convinced that the plaintiff is entitled to purchase the land in question for the purposes indicated by the record. In other words, in admitting plaintiff's right, I am influenced more by the benefits to be derived by the laborers from the proposed improvements than by the advantages that will be obtained by the plaintiff from the land. Who would not admit that a fixed number of laborers is necessary for the continuous and efficient operation of plaintiff's mill ? Who would not admit that additional houses and a playground are conducive to the welfare and physical fitness of the laborers and supply the most effective, if not the only, means for keeping them regularly attached to the plaintiff ? And who would not then admit that the proposed improvements are essential to the enterprises referred to in clause 9 of the milling contract and affect, so to say, the very existence of the plaintiff? Let us remember, in this connection, that the successful operation of

plaintiff's mill will redound not only to its advantage but to the advantage of Hacienda Helvetia and all areas related to the plaintiff by milling contracts. At the same time let us not forget that the laborers instrumental in accomplishing the aims of the plaintiff are entitled to share in the resulting benefits, if only in the form of better quarters and a playground. I find in this case a real opportunity for ministering social justice.

I therefore vote for the affirmance of the appealed judgment, with the only modification that the price to be paid by the plaintiff for the land in question should be P300 per hectare,

BOCOBO, J.: I concur in the foregoing dissenting opinion of Mr. Justice Parafic.

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