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## SECOND DIVISION

[ G.R. No. 191856, December 07, 2016 ]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE  
BUREAU OF INTERNAL REVENUE (BIR), PETITIONER, V. GMCC  
UNITED DEVELOPMENT CORPORATION, JOSE C. GO, AND XU  
XIAN CHUN, RESPONDENTS.**

### DECISION

**LEONEN, J.:**

Before this Court is a Petition for Review on Certiorari<sup>[1]</sup> assailing the Court of Appeals' Decision<sup>[2]</sup> dated September 8, 2009 and Resolution<sup>[3]</sup> dated March 30, 2010 in CA-G.R. SP No. 100380. The Court of Appeals affirmed the May 26, 2006 Resolution<sup>[4]</sup> of the Department of Justice, which dismissed the criminal complaint for tax evasion filed by the Bureau of Internal Revenue against GMCC United Development Corporation's corporate officers on the ground that the period to assess the tax had already prescribed.<sup>[5]</sup>

On March 28, 2003, the Bureau of Internal Revenue National Investigation Division issued a Letter of Authority, authorizing its revenue officers to examine the books of accounts and other accounting records of GMCC United Development Corporation (GMCC) covering taxable years 1998 and 1999.<sup>[6]</sup> On April 3, 2003 GMCC was served a copy of said Letter of Authority and was requested to present its books of accounts and other accounting records.<sup>[7]</sup> GMCC failed to respond to the Letter of Authority as well as the subsequent letters requesting that its records and documents be produced.<sup>[8]</sup>

Due to GMCC's failure to act on the requests, the Assistant Commissioner of the Enforcement Service of the Bureau of Internal Revenue issued a Subpoena Duces Tecum on GMCC president, Jose C. Go (Go).<sup>[9]</sup> When GMCC still failed to comply with the Subpoena Duces Tecum, the revenue officers were constrained to investigate GMCC

through Third Party Information.<sup>[10]</sup>

The investigation revealed that in 1998, GMCC, through Go, executed two *dacion en pago* agreements to pay for the obligations of GMCC's sister companies, Ever Emporium, Inc., Gotesco Properties, Inc. and Ever Price Club, Inc., to Rizal Commercial Banking Corporation.<sup>[11]</sup> GMCC allegedly failed to declare the income it earned from these agreements for taxation purposes in 1998.<sup>[12]</sup> Moreover, these transactions constituted a donation in favor of GMCC's sister companies for which GMCC failed to pay the corresponding donor's tax.<sup>[13]</sup> The BIR also assessed the value added tax over the said transactions.<sup>[14]</sup>

It was also discovered that in 1999, GMCC sold condominium units and parking slots for a total amount of P5,350,000.00 to a Valencia K. Wong.<sup>[15]</sup> However, GMCC did not declare the income it earned from these transactions in its 1999 Audited Financial Statements.<sup>[16]</sup>

Thus, on November 17, 2003, the Bureau of Internal Revenue issued a Notice to Taxpayer to GMCC, which GMCC ignored.<sup>[17]</sup> On December 8, 2003, the Bureau of Internal Revenue issued a Preliminary Assessment Notice.<sup>[18]</sup> It was only when the Bureau of Internal Revenue issued the Final Assessment Notice that GMCC responded.<sup>[19]</sup> In a Letter dated November 23, 2004, GMCC protested the issuance of the Final Assessment Notice citing that the period to assess and collect the tax had already prescribed. The Bureau of Internal Revenue denied the protest in a Final Decision dated February 10, 2005.<sup>[20]</sup>

In light of the discovered tax deficiencies, the Bureau of Internal Revenue, on October 7, 2005, filed with the Department of Justice a criminal complaint for violation of Sections 254,<sup>[21]</sup> 255,<sup>[22]</sup> and 267,<sup>[23]</sup> of the National Internal Revenue Code against GMCC, its president, Jose C. Go, and its treasurer, Xu Xian Chun.<sup>[24]</sup>

In his Counter-Affidavit, Go prayed that the complaint be dismissed, arguing, among others, that the action had already prescribed and that GMCC did not defraud the government.<sup>[25]</sup> Assuming that the period to assess had not yet prescribed, GMCC argued that there was nothing to declare since it earned no income from the *dacion en pago* transactions.<sup>[26]</sup> Furthermore, even though the *dacion en pago* transactions were not included in the GMCC 1998 Financial Statement, they had been duly reflected in the GMCC 2000 Financial Statement.

On May 26, 2006, the Department of Justice, through the Chief State Prosecutor, issued a Resolution<sup>[27]</sup> dismissing the criminal complaint against the GMCC officers. The State

Prosecutor ruled that there was no proof that GMCC defrauded the government. The Bureau went beyond its authority when it assessed and issued the Letter of Authority knowing that the period to assess had already lapsed. Moreover, the prosecutor ruled that since GMCC did not gain from the assailed transactions, the imposition of income, VAT, and donor's taxes were improper.<sup>[28]</sup> The dispositive portion of the Resolution reads:

All told, we find no probable cause to warrant indictment of respondents for violation of Sections 254, 255 and 267 of the National Internal Revenue Code of 1997.

**WHEREFORE**, it is respectfully recommended that the instant complaint be **DISMISSED**.<sup>[29]</sup>

The Bureau of Internal Revenue filed a Motion for Reconsideration,<sup>[30]</sup> which the Department of Justice denied in the Resolution dated August 31, 2006.<sup>[31]</sup>

Aggrieved, the Bureau of Internal Revenue filed before the Court of Appeals a Petition for Certiorari.<sup>[32]</sup> The Bureau argued that the Department of Justice gravely abused its discretion in dismissing the criminal complaint against GMCC's officers. On September 8, 2009, the Court of Appeals denied the Petition and affirmed *in toto* the Department of Justice's Resolution. The dispositive portion of the Decision<sup>[33]</sup> reads:

**WHEREFORE**, the foregoing considered, the instant petition is hereby **DISMISSED** and the assailed resolutions **AFFIRMED** *in toto*. No costs.

**SO ORDERED**.<sup>[34]</sup>

The Bureau of Internal Revenue moved for reconsideration, but it was denied in the Resolution<sup>[35]</sup> dated March 30, 2010.

Petitioner Bureau of Internal Revenue is now before this Court, insisting that the Court of Appeals erred in finding that the applicable period of prescription in its case is the three-year period under Section 203 of the NIRC and not the ten-year prescriptive period under Section 222.<sup>[36]</sup>

The issues before us are as follows:

First, whether the Court of Appeals erred in declaring that the Secretary of Justice did not commit grave abuse of discretion when he found no probable cause and dismissed the tax evasion case against the respondent officers of GMCC.

Second, whether the applicable prescriptive period for the tax assessment is the ten-year period or the three-year period.

The Petition must be denied.

## I

We are convinced that the Court of Appeals committed no reversible error in affirming the ruling of the Secretary of Justice that there was no probable cause to file a tax evasion case against the respondent officers. Since the assessment for the tax had already prescribed, no proceeding in court on the basis of such return can be filed.

The petitioner filed a criminal complaint against respondents for violating Articles 254, 255, and 267 of the National Internal Revenue Code. The Articles provide:

SEC. 254. Attempt to Evade or Defeat Tax. - Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to the other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Thirty thousand pesos (P30,000.00) but not more than One hundred thousand pesos (P100,000.00) and suffer imprisonment of not less than two (2) years but not more than four (4) years: Provided, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes.

SEC. 255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation. - Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of an internal revenue office wherein the same was actually filed shall, upon conviction therefore, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand

pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.

SEC. 267. Declaration under Penalties of Perjury. - Any declaration, return and other statements required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code.

In ruling that there was no probable cause to indict the respondent officers for the acts charged, the Court of Appeals said there was no clear showing that there was deliberate intent on the part of the respondents to evade payment of the taxes. Both the State Prosecutor<sup>[37]</sup> and the Court of Appeals<sup>[38]</sup> emphasized that if respondents really intended to evade payment, they would have omitted the assailed transactions completely in all their financial statements. We agree.

As it stands, while the *dacion en pago* transactions were missing in the GMCC 1998 Financial Statement, they had been listed in the GMCC 2000 Financial Statement.<sup>[39]</sup> Respondents' act of filing and recording said transactions in their 2000 Financial Statement belie the allegation that they intended to evade paying their tax liability. Petitioner's contention that the belated filing is a mere afterthought designed to make it appear that the non-reporting was not deliberate, does not persuade considering that the filing of the 2000 Financial Statement was done prior to the issuance of the March 2003 Letter of Authority, which authorized the investigation of GMCC's books.<sup>[40]</sup>

In any case, this Court has a policy of non-interference in the conduct of preliminary investigations. In *First Women's Credit Corporation v. Baybay*<sup>[41]</sup> the Court said:

It is settled that the determination of whether probable cause exists to warrant the prosecution in court of an accused should be consigned and entrusted to the Department of Justice, as reviewer of the findings of public prosecutors. The court's duty in an appropriate case is confined to a determination of whether the assailed executive or judicial determination of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction. This is consistent with the general rule that criminal prosecutions may not be restrained or stayed by injunction, preliminary or final, albeit in extreme cases, exceptional circumstances have been recognized. The rule is also consistent with this Court's policy of non-interference in the conduct of preliminary investigations, and of leaving to the investigating prosecutor sufficient latitude of discretion in the exercise of determination of what constitutes sufficient evidence as will establish probable cause for the filing of

an information against a supposed offender. While prosecutors are given sufficient latitude of discretion in the determination of probable cause, their findings are subject to review by the Secretary of Justice.

Once a complaint or information is filed in court, however, any disposition of the case, e.g., its dismissal or the conviction or acquittal of the accused rests on the sound discretion of the Court.<sup>[42]</sup>

Moreover, a prosecutor's grave abuse of discretion in dismissing a case must be clearly shown before the Courts can intervene. *Elma v Jacobi*,<sup>[43]</sup> explained:

The necessary component of the Executive's power to faithfully execute the laws of the land is the State's self-preserving power to prosecute violators of its penal laws. This responsibility is primarily lodged with the DOJ, as the principal law agency of the government. The prosecutor has the discretionary authority to determine whether facts and circumstances exist meriting reasonable belief that a person has committed a crime. The question of whether or not to dismiss a criminal complaint is necessarily dependent on the sound discretion of the investigating prosecutor and, ultimately, of the Secretary (or Undersecretary acting for the Secretary) of Justice. Who to charge with what crime or none at all is basically the prosecutor's call.

Accordingly, the Court has consistently adopted the policy of non interference in the conduct of preliminary investigations, and to leave the investigating prosecutor sufficient latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause. Courts cannot order the prosecution of one against whom the prosecutor has not found a prima facie case; as a rule, courts, too, cannot substitute their own judgment for that of the Executive.

In fact, the prosecutor may err or may even abuse the discretion lodged in him by law. This error or abuse alone, however, does not render his act amenable to correction and annulment by the extraordinary remedy of certiorari. To justify judicial intrusion into what is fundamentally the domain of the Executive, the petitioner must clearly show that the prosecutor gravely abused his discretion amounting to lack or excess of jurisdiction in making his determination and in arriving at the conclusion he reached. This requires the petitioner to establish that the prosecutor exercised his power in an arbitrary and despotic manner by reason of passion or personal hostility; and it must be so patent and gross as to amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law, before judicial relief from a discretionary prosecutorial action may be obtained.<sup>[44]</sup>



Based on the foregoing, absent any indication that the Secretary of Justice gravely abused his discretion in not finding probable cause for the complaint against respondent officers to prosper, the dismissal stands.

## II

As to the issue on the applicable prescriptive period, it is the three-year prescriptive period that applies in this case.

The power of the Commissioner of Internal Revenue to assess and collect taxes is provided under Section 2 of the National Internal Revenue Code:

SEC. 2. Powers and Duties of the Bureau of Internal Revenue - The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts.

The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws.

However, this power to assess and collect taxes is limited by Section 203 of the National Internal Revenue Code:

SEC. 203. Period of Limitation Upon Assessment and Collection.- Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed.

For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

The Court, in *Republic v. Ablaza*,<sup>[45]</sup> explained the purpose behind this limitation:

The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription

citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such a legal defense[,] taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer within the contemplation of the Commission which recommend the approval of the law.<sup>[46]</sup>

Petitioner contends that Section 203 finds no application in this case and insists that it is Section 222 of the same Code, which should be applied. Section 222 in part states:

SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. -

- (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

In arguing for the application of the 10-year prescriptive period, petitioner claims that the tax return in this case is fraudulent and thus, the three-year prescriptive period is not applicable.<sup>[47]</sup>

Petitioner fails to convince that respondents filed a fraudulent tax return. The respondents may have erred in reporting their tax liability when they recorded the assailed transactions in the wrong year, but such error stemmed from the wrong application of the law and is not an indication of their intent to evade payment. If there were really an intent to evade payment, respondents would not have reported and subsequently paid the income tax, albeit in the wrong year.

In *Commissioner of Internal Revenue v. B.F. Goodrich Phils., Inc.*,<sup>[48]</sup> the Court emphasized that the Bureau of Internal Revenue must show that the return was filed fraudulently with intent to evade payment. The Court ruled:

Ineludibly, the BIR failed to show that private respondent's 1974 return was filed fraudulently with intent to evade the payment of the correct amount of tax.



Moreover, even though a donor's tax, which is defined as "a tax on the privilege of transmitting one's property or property rights to another or others without adequate and full valuable consideration," is different from capital gains tax, a tax on the gain from the sale of the taxpayer's property forming part of capital assets, the tax return filed by private respondent to report its income for the year 1974 was sufficient compliance with the legal requirement to file a return. In other words, the fact that the sale transaction may have partly resulted in a donation does not change the fact that private respondent already reported its income for 1974 by filing an income tax return.

Since the BIR failed to demonstrate clearly that private respondent had filed a fraudulent return with the intent to evade tax, or that it had failed to file a return at all, the period for assessments has obviously prescribed. Such instances of negligence or oversight on the part of the BIR cannot prejudice taxpayers, considering that the prescriptive period was precisely intended to give them peace of mind.<sup>[49]</sup>

As found by the Court of Appeals, there is no clear and deliberate intent to evade payment of taxes in relation to the *dacion en pago* transactions<sup>[50]</sup> or on the sale transaction with Valencia Wong.<sup>[51]</sup> The *dacion en pago* transactions, though not included in the 1998 Financial Statement, were properly listed in GMCC's Financial Statement for the year 2000.<sup>[52]</sup> Regarding the sale transaction with Valencia Wong, the respondents said that it was not reflected in the year 1999 because it was an installment sale. Units sold on installment, they explained, are recognized not in the year they are fully paid, but in the year when at least 25% of the selling price is paid.<sup>[53]</sup> In this instance, the unit and the parking lot were sold prior to 1996, thus, in the Schedule of Unsold Units filed by GMCC as of December 31, 1996, the said properties were no longer included.<sup>[54]</sup>

For the ten-year period under Section 222(a) to apply, it is not enough that fraud is alleged in the complaint, it must be established by clear and convincing evidence.<sup>[55]</sup> The petitioner, having failed to discharge the burden of proving fraud, cannot invoke Section 222(a).

Having settled that the case falls under Section 203 of the Tax Code, the three-year prescriptive period should be applied. In GMCC's case, the last day prescribed by law for filing its 1998 tax return was April 15, 1999.<sup>[56]</sup> The petitioner had three years or until 2002 to make an assessment. Since the Preliminary Assessment was made only on December 8, 2003, the period to assess the tax had already prescribed.

A reading of Section 203 will show that it prohibits two acts after the expiration of the three-year period. First, an assessment for the collection of the taxes in the return, and

second, initiating a court proceeding on the basis of such return. The State Prosecutor was correct in dismissing the complaint for tax evasion since it was clear that the prescribed return cannot be used as basis for the case.

All told, the dismissal of the tax evasion case against respondent officers was proper. The Court of Appeals did not err in affirming the dismissal. Petitioner failed to prove that respondent officers wilfully intended to evade paying tax. Moreover, having found no basis to disregard the three-year period of prescription, it is clear that the assessments were issued beyond the statute of limitations.

**WHEREFORE**, the Petition is **DENIED**. The Decision dated September 8, 2009 and the Resolution dated March 30, 2010 of the Court of Appeals in CA-GR. SP No. 100380 are **AFFIRMED**.

**SO ORDERED.**

*Carpio, (Chairperson), Brion, Del Castillo, and Mendoza, JJ., concur.*

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[1] *Rollo*, pp. 32-72.

[2] *Id.* at 9-24. The Decision was penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Celia C. Librea-Leagogo and Priscilla J. Baltazar-Padilla of the Eighth Division, Court of Appeals Manila.

[3] *Id.* at 516-517.

[4] *Id.* at 211-223.

[5] *Id.* at 211-223.

[6] *Id.* at 10.

[7] *Id.*

[8] *Id.* at 10-11.

[9] *Id.* at 11.

[10] *Id.*

[11] Id.

[12] Id. at 11-12.

[13] Id. at 12.

[14] Id.

[15] Id.

[16] Id.

[17] Id. at 13.

[18] Id.

[19] Id.

[20] Id.

[21] TAX CODE, sec. 254 provides:

SEC. 254. Attempt to Evade or Defeat Tax. -Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to the other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Thirty thousand pesos (P30,000.00) but not more than One hundred thousand pesos (P100,000.00) and suffer imprisonment of not less than two (2) years but not more than four (4) years: *Provided*, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes.

[22] TAX CODE, sec. 255 provides:

SEC. 255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation. - Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess

taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years. Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of an internal revenue office wherein the same was actually filed shall, upon conviction therefore, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.

[23] TAX CODE, sec. 267 provides:

SEC. 267. Declaration under Penalties of Perjury. - Any declaration, return and other statements required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code.

[24] *Rollo*, p. 130.

[25] *Rollo*, p. 13.

[26] *Id.* at 14.

[27] *Id.* at 211-223. The Resolution was signed by State Prosecutor Melvin J. Abad and approved by Assistant Chief State Prosecutor Miguel F. Gudio, Jr., and Chief State Prosecutor Jovencito R. Zuño.

[28] *Id.* at 222.

[29] *Id.* at 222-223.

[30] *Id.* at 224-239.

[31] *Id.* at 266-267.

[32] *Id.* at 32-72.

[33] Id. at 9-24.

[34] Id. at 24.

[35] Id. at 90-91.

[36] Id. at 63-65.

[37] Id. at 221.

[38] Id. at 20-21.

[39] Id. at 20.

[40] Id.

[41] *First Women's Credit Corporation v. Baybay*, 542 Phil. 607 (2007) [Per J. Carpio-Morales, Second Division].

[42] Id. at 614-615.

[43] *Elma v. Jacobi*, 689 Phil. 307 (2012) [Per J. Brion, Second Division].

[44] Id. at 340-342.

[45] *Republic v. Ablaza*, 108 Phil. 1105 (1960) [Per J. Labrador, En Banc].

[46] Id. at 1108.

[47] Rollo, p. 50.

[48] *Commissioner of Internal Revenue v. B.F. Goodrich Phils., Inc.*, 363 Phil. 169 (1999) [Per J. Panganiban, Third Division].

[49] Id. at 180.

[50] Rollo, p. 20.

[51] Id. at 21.

[52] Id. at 20.

[53] Id. at 150.

[54] Id.

[55] *Republic v. Lim De Yu*, 119 Phil. 1013, 1015-1016 (1964) [Per J. Makalintal, En Banc].

[56] *Rollo*, p. 143.

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