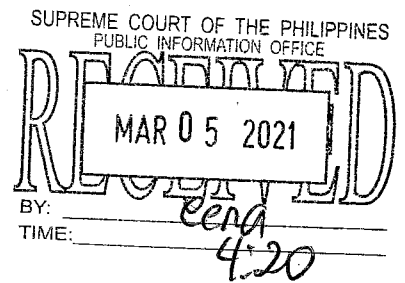




Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated September 7, 2020, which reads as follows:

“G.R. No. 237983 – (WILFREDO OLAÑO SY, *petitioner* v. COURT OF APPEALS AND BONIFACIO A. BANAYAD, JR., *respondents*). – This resolves the Petition for *Certiorari*¹ under Rule 65 of the Rules of Court filed by petitioner Wilfredo Olaño Sy (Wilfredo), praying for the annulment of the August 4, 2017 Decision² and January 25, 2018 Resolution³ of the Court of Appeals (CA) in CA-G.R. SP No. 149851. The CA reversed the December 16, 2016 Order⁴ of the Regional Trial Court (RTC) of Pasay City, Branch 115 and reinstated the March 9, 2016 Decision⁵ of the Metropolitan Trial Court (MeTC) of Pasay City, Branch 45, which dismissed Wilfredo’s Complaint for Unlawful Detainer.

Antecedents

Wilfredo is the owner of a parcel of land located at Burgos St., Sta. Clara, Pasay City covered by Transfer Certificate of Title No. 003-2014000704. The said parcel of land houses a three-unit apartment building. One of the units therein is 2337-B (subject property) occupied by respondent Bonifacio A. Banayad, Jr. (Bonifacio) allegedly through Wilfredo’s tolerance, sans payment of rental.

Desiring to use the subject property, Wilfredo requested Bonifacio to vacate the subject property in November 2014. The demand was unheeded. Wilfredo sent a final demand to vacate dated March 2, 2015. Still, Bonifacio

¹ *Rollo*, pp. 3-13.

² *Id.* at 15-26; penned by Associate Justice Marlene B. Gonzales-Sison, with Associate Justices Pedro B. Corales and Marie Christine Azcarraga-Jacob, concurring.

³ *Id.* at 27-28

⁴ The Order was issued by Judge Francisco G. Mendiola, *id.* at 59-62.

⁵ The Decision was rendered by Judge Remiebel U. Mondia, *id.* at 52-58.

refused to comply. Hence, Wilfredo filed a Complaint⁶ for unlawful detainer against Bonifacio and all persons claiming rights under him. He prayed that a judgment be rendered ordering Bonifacio to vacate the property, and pay a monthly rent of ₱10,000.00, computed from the initial demand on November 2014.

On May 7, 2015, Bonifacio and his siblings Emerenciana Banayad, Socorro Banayad Adame and Zenaida Banayad Parcero filed an Answer with Compulsory Counterclaim.⁷ They averred that Bonifacio was born, raised, and has been living in the subject property for more than 70 years pursuant to his right as a legal heir of Moises F. Banayad (Moises), and not by virtue of Wilfredo's tolerance. Moises is Bonifacio's uncle who died without any compulsory heirs. The property is part of the estate of the late Moises, and is the subject of a pending case before the RTC Branch 109 of Pasay City, entitled "*In the Matter of Allowance of Will of Moises F. Banayad*," filed by Apolonia Banayad Freinela (Apolonia), Bonifacio's sister. While the special proceeding was pending, Apolonia and Servillano Banayad, Jr. (Servillano), Bonifacio's cousin, sold the subject property to Wilfredo, without the knowledge and consent of Moises' other heirs.

Ruling of the MeTC

On March 9, 2016, the MeTC dismissed⁸ the complaint for unlawful detainer. The MeTC noted that Bonifacio possessed the subject property in the concept of an owner, and not through Wilfredo's tolerance. Bonifacio has been in continuous, open and notorious possession of the property for more than seventy years. He was born, raised and grew old there.⁹

Likewise, the MeTC held that Wilfredo failed to prove that Bonifacio's stay in the subject property was due to his tolerance. Wilfredo failed to show any overt acts indicative of his predecessor's tolerance.¹⁰

The dispositive portion of the MeTC ruling states:

WHEREFORE, all the foregoing considered, judgment is hereby rendered in favor of defendant Bonifacio A. Banayad, Jr. and all persons claiming rights under him. The Complaint for Unlawful Detainer filed by plaintiff Wilfredo Olaño Sy is hereby DISMISSED.

SO ORDERED.¹¹

⁶ Id. at 29-31.

⁷ Id. at 36-45.

⁸ Id. at 52-58.

⁹ Id. at 56.

¹⁰ Id. at 57.

¹¹ Id. at 58.

Dissatisfied with the ruling, Wilfredo filed an appeal with the RTC.

Ruling of the RTC

On December 16, 2016, the RTC reversed¹² the MeTC's pronouncement. The RTC declared that Wilfredo is the owner of the subject property and is entitled to its possession.¹³ Bonifacio's right over the subject property is merely inchoate, whereas Wilfredo's title thereto is "presently existing, valid and legal."¹⁴ The subject property had been transferred to Wilfredo by virtue of a Torrens Title. Thus, it could no longer form part of Moises' estate.¹⁵

The RTC disposed of the case as follows:

WHEREFORE, finding Wilfredo's appeal valid and meritorious, the lower court's Decision dated March 6, 2016 is reversed and set aside, and a new one rendered in favor of plaintiff-appellant, as follows:

1. Ordering [Bonifacio] and all persons claiming rights under him to vacate the premises at Unit/No. 2237-B Burgos St., Sta. Clara, Pasay City; and peacefully turn over the premises to [Wilfredo];

2. Ordering [Bonifacio] and all persons claiming rights under him to pay [Wilfredo] reasonable compensation for the use and occupancy of the subject premises of Php10,000.00 per month; or the total of Php200,000.00 as of November 2, 2016 (20 months from demand), until they actually and finally vacate the said premises;

3. Ordering [Bonifacio] and all persons claiming rights under him to pay [Wilfredo] attorney's fees of Php50,000.00; plus appearance fees of Php3,000.00 per hearing.

No costs.

SO ORDERED.¹⁶

Bonifacio filed a Motion for Reconsideration, which was denied in the Order¹⁷ dated February 15, 2017.

Aggrieved, Bonifacio filed a Petition for Review (With Prayer for Writ of Preliminary Injunction) under Rule 42 of the Rules of Court with the CA.

¹² Id. at 59-62.

¹³ Id. at 61.

¹⁴ Id. at 60.

¹⁵ Id.

¹⁶ Id. at 61-62.

¹⁷ Id. at 63-64.

Ruling of the CA

On August 4, 2017, the CA rendered the assailed Decision¹⁸ reversing the RTC's judgment.

The CA noted that Wilfredo failed to prove the essential allegations for the action for unlawful detainer to prosper.¹⁹ He failed to allege and prove how and when Bonifacio entered the subject property, or give details on who specifically permitted Bonifacio to occupy it. Likewise, he did not prove that the supposed acts of tolerance were present from the very start of the possession.²⁰ The absence of the first requisite assumes importance considering that Bonifacio had been staying in the subject property for more than seventy years, not by Wilfredo's tolerance, but due to a vested right as a legal heir of Moises.²¹

The decretal portion of the CA ruling reads:

WHEREFORE, the instant petition is GRANTED. Accordingly, the assailed Order dated December 16, 2016 of the Regional Trial Court of Pasay City, Branch 115, in Civil Case No. M-PSY-15-19028-CV-R00-00 is REVERSED and SET ASIDE. The Decision dated March 9, 2016 of the Metropolitan Trial Court, Branch 45, in Civil Case No. M-PSY-15-19028-CV is hereby AFFIRMED.

SO ORDERED.²²

Wilfredo filed a Motion for Reconsideration, which was denied in the Resolution²³ dated January 25, 2018.

Undeterred, Wilfredo filed the instant Petition for *Certiorari*²⁴ under Rule 65 of the Rules of Court.

Issues

In his Petition,²⁵ Wilfredo maintains that he is the owner of the subject property, and is thus, entitled to its possession.²⁶ He purchased it from the Banayad siblings. From the perfection of the sale, the siblings, including Bonifacio, lost their rights over the subject property.²⁷ He likewise points out that

¹⁸ Id. at 15-26.

¹⁹ Id. at 23.

²⁰ Id.

²¹ Id.

²² Id. at 25.

²³ Id. at 27-28.

²⁴ Id. at 3-13.

²⁵ Id.

²⁶ Id. at 10.

²⁷ Id. at 8.

he and Apolonia entered into a Memorandum of Agreement (MOA), wherein the latter undertook to convince Bonifacio to leave.²⁸ However, since Apolonia failed to fulfill her undertaking, Wilfredo was constrained to send a demand for Bonifacio to vacate, and thereafter, file the action for unlawful detainer.²⁹

Wilfredo posits that following the execution of the Deed of Absolute Sale and the MOA, Bonifacio's continued stay in the subject property is already based on his tolerance.³⁰ Added thereto, the fact of tolerance was proven by Bonifacio's own admission that he does not pay a rental fee.³¹ Wilfredo alleges that the CA committed grave abuse of discretion in failing to recognize that the relationship between him and Bonifacio is akin to a lease contract.³² Bonifacio's status is similar to a lessee whose term of lease has expired, but nonetheless continues to occupy due to the lessor's tolerance.³³

In his Comment,³⁴ Bonifacio counters that the petition for *certiorari* must be dismissed outright for being the wrong mode of recourse.³⁵ Bonifacio claims that the CA acted within its jurisdiction when it dismissed Wilfredo's case. Hence, Wilfredo should have filed an ordinary appeal under Rule 45 of the Rules of Court to question the CA's Decision.³⁶

Ruling of the Court

The petition is denied.

Wilfredo availed of the wrong remedy by filing a petition for certiorari under Rule 65.

The Court exhaustively discussed the difference between a petition for *certiorari* under Rule 65 and a petition for review on *certiorari* under Rule 45 in *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC, et al.*:³⁷

First, this petition for *certiorari* is a wrong remedy. A petition for *certiorari* under Rule 65 of the Rules of Court is a special civil action that may be resorted to only in the absence of appeal or any plain, speedy and adequate remedy in the ordinary course of law. Contrary to petitioner's claim in the

²⁸ Id. at 8-9.

²⁹ Id. at 10-11.

³⁰ Id. at 10.

³¹ Id. at 9.

³² Id. at 8.

³³ Id.

³⁴ Id. at 81-88.

³⁵ Id. at 87.

³⁶ Id.

³⁷ 716 Phil. 500 (2013).

Jurisdictional Facts portion of its petition that there was no appeal or any other plain, speedy and adequate remedy in the ordinary course of law other than this petition for *certiorari*, the right recourse was to appeal to this Court in the form of a petition for review on *certiorari* under Rule 45 of the Rules of Court, xxx

x x x x

The proper remedy to obtain a reversal of judgment on the merits, final order or resolution is appeal. This holds true even if the error ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision, order or resolution. The existence and availability of the right of appeal prohibits the resort to *certiorari* because one of the requirements for the latter remedy is that there should be no appeal.³⁸ (Citations omitted)

Equally important, a petition for *certiorari* is an independent action that may be availed of only as a last resort. This was the important pronouncement in *Albor v. Court of Appeals*:³⁹

x x x [A] special civil action under Rule 65 is a limited form of review and is a remedy of last recourse. It is an independent action that lies only where there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. *Certiorari* will issue only to correct errors of jurisdiction, not errors of procedure or mistakes in the findings or conclusions of the lower court. As long as the court *a quo* acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctible by an appeal or a petition for review under Rule 45 of the Rules of Court.⁴⁰ (Citations omitted)

Notably, the CA acted within its jurisdiction when it rendered the assailed August 4, 2017 Decision. The decision was a final judgment that disposed of the case for unlawful detainer in a manner that left nothing more to be done. Wilfredo may not conveniently claim that “he has no plain, speedy and adequate remedy in the ordinary course of law.”⁴¹ He should have filed a petition for review on *certiorari* under Rule 45 within 15 days from his receipt of the CA Resolution dated January 25, 2018.

Wilfredo admits that he received the CA Resolution on January 31, 2018. Henceforth, he had 15 days to file a Rule 45 petition. A perusal of Wilfredo’s petition shows that in addition to being a wrong mode of recourse, it was prepared and filed way beyond the 15-day reglementary period. Thus, even if the Court excuses his mishap, his Petition may not be treated as a Rule 45 petition. Moreover, the alleged errors he raised are at best, errors of judgment correctible through a Rule 45 petition. It is settled that an appeal taken to this Court through

³⁸ Id. at 512-513.

³⁹ 823 Phil. 901 (2018).

⁴⁰ Id. at 909-910.

⁴¹ *Rollo*, p. 6.

the wrong or inappropriate mode shall be dismissed.⁴²

Concededly, there have been cases where the Court extended its liberality and gave due course to erroneously filed petitions. The special circumstances that warranted a relaxation of the rules include, “(i) when public welfare and the advancement of public policy dictates; (ii) when the broader interest of justice so requires; (iii) when the writs issued are null and void; and (iv) when the questioned order amounts to an oppressive exercise of judicial authority.”⁴³ None of the aforementioned circumstances exist in this case.

Besides, even if the Court condones Wilfredo’s procedural mishap, the petition nonetheless fails on the merits.

Wilfredo failed to prove the jurisdictional facts in an action for unlawful detainer

Significantly, ejectment cases consisting of unlawful detainer and forcible entry are designed to summarily restore the physical possession of a piece of land or building to one who has been illegally deprived thereof. These actions are intended to avoid a disruption of the public order perpetrated by those who take the law in their own hands to enforce their claimed right of possession.⁴⁴

In ejectment suits, the only issue for resolution is the physical or material possession of the property involved, independent of any claim of ownership. The ruling rendered therein shall be without prejudice to the settlement of the parties’ opposing claims of juridical possession in appropriate proceedings.⁴⁵

By electing to file an action for unlawful detainer, the complainant must allege and prove following key jurisdictional facts:

- (i) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff;
- (ii) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter’s right of possession;
- (iii) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and
- (iv) within one year from the last demand on defendant to vacate the property,

⁴² *Far Eastern Surety and Insurance Co. Inc. v. People*, 721 Phil. 760, 770-771 (2013).

⁴³ *Vda. De Mendez v. Court of Appeals, et al.*, 687 Phil. 185, 194 (2012), citing *Chua v. Santos*, 483 Phil. 392, 400 (2004).

⁴⁴ *De Guzman-Fuerte v. Estomo*, 830 Phil. 653 (2018), citing *Barrientos v. Rapal*, 669 Phil. 438, 444, 447 (2011).

⁴⁵ *Id.*

the plaintiff instituted the complaint for ejectment.⁴⁶

In the instant case, Wilfredo anchored his complaint on his tolerance of Bonifacio’s stay over the subject property. He made the following averments:

x x x x

3. Plaintiff is the owner in fee simple of a parcel of land located at No. 2237 Burgos St., Sta. Clara, Pasay City; covered and embraced by Transfer Certificate of Title No. 003-2014000704; copy of which is hereto attached and made an integral part hereof as ANNEX-’A’;

4. On the said parcel of land is an old and dilapidated 3-door/unit apartment building; one of which (Unit 2237-B) is being occupied by herein Defendant by mere tolerance without paying any centavo as rental; (two other units were already vacant);

5. Plaintiff intend[s] to use the subject premises for his family and to build thereon a more safer structure to live in; but despite repeated demands made by the plaintiff to herein Defendant to vacate the subject premises, the latter persistently and unjustly refused to vacate;

x x x x

7. Likewise, a Final Demand Letter (to pay and to vacate) was made to the herein Defendant (and all persons claiming rights under him), but still to no avail; copy of which is hereto attached and made an integral part hereof as ANNEX-’C’;

8. The reasonable value of compensation/rental for the use and occupancy of the subject premises being occupied by herein Defendant is Php 10,000.00 per month; and therefore, the herein Defendant and all person[s] claiming rights under him should be made to pay said reasonable compensation from the initial demand to vacate in November 2014 until they actually and finally vacate the subject premises.⁴⁷

However, the CA dismissed Wilfredo’s complaint on account of his failure to prove his allegation of tolerance:

x x x Wilfredo failed to allege and prove how and when [Bonifacio] entered the subject premises. Wilfredo was likewise silent about the details on who specifically permitted [Bonifacio] to occupy the premises in question, and how and when such tolerance came about. In addition, Wilfredo must also show that the supposed acts of tolerance have been present right from the very start of the possession – from entry to the property. Otherwise, if the possession was unlawful from the start, an action for unlawful detainer would be an improper remedy. Notably, no mention was made in the complaint of how entry by petitioner was effected or how and when dispossession started. Nether was there any evidence showing such details.

⁴⁶ *Suarez v. Emboj*, 729 Phil. 315, 330 (2014).

⁴⁷ *Rollo*, pp. 29-30.

It is worth noting that the absence of the first requisite assumes even more importance in the light of the petitioner's claim that he was born, raised and lived at the subject premises for more than seventy (70) years, not by mere tolerance of [Wilfredo], but by virtue of a vested right over the subject property as legal heir of Moises F. Banayad.⁴⁸ (Citations omitted)

The CA's ruling is in accord with jurisprudence.

In an action for unlawful detainer, the complainant must prove through a preponderance of evidence that he/she consented to the possession of the property through positive acts.⁴⁹ There must be clear and convincing proof of his/her tolerance.

In a long line of cases, the Court defined the concept of tolerance "as an authorization, permission or license" that must exist at the very beginning of the possession.⁵⁰ Tolerance always carries with it permission. It cannot be based on mere silence or inaction,⁵¹ and may not be confused with mere passivity.⁵² It bears stressing that tolerance "transcends silence and connotes permission to possess the property subject of an unlawful detainer case."⁵³

Equally important, tolerance must precede the deforciant's entry into the property. Notably, in *Jose v. Alfuerto, et. al.*,⁵⁴ *Dr. Carbonilla v. Abiera, et al.*,⁵⁵ and *Zacarias v. Anacay*,⁵⁶ the Court required that tolerance or permission must be present at the outset. The plaintiff must present supporting evidence to show how and when the respondents entered the property, and who granted them permission to enter.⁵⁷

Furthermore, in *Quijano v. Amante*,⁵⁸ the Court required the plaintiff to lay the basis of such lawful possession.⁵⁹ Consequently, an action for unlawful detainer shall be dismissed if the plaintiff fails to point to a clear and overt act proving his/her tolerance prior to the questioned occupancy.⁶⁰ In fact, the Court warned in *Padre v. Malabanan*,⁶¹ and *De Guzman-Fuerte v. Estomo*,⁶² that a bare claim of tolerance will not suffice.⁶³ If the possession was unlawful from the start, an action for unlawful detainer should be dismissed for being an improper

⁴⁸ Id. at 23.

⁴⁹ *Lozano v. Fernandez*, G.R. No. 212979, February 18, 2019.

⁵⁰ *Sarona, et al. v. Villegas, et al.*, 131 Phil. 365, 372-373 (1968).

⁵¹ *Dr. Carbonilla v. Abiera, et al.*, 639 Phil. 473, 482 (2010).

⁵² *Lozano v. Fernandez*, supra.

⁵³ Id.

⁵⁴ 699 Phil. 307 (2012), citing *Ten Forty Realty and Development Corporation v. Cruz*, 457 Phil. 603 (2003); and *Go, Jr. v. Court of Appeals*, 415 Phil. 172 (2001).

⁵⁵ Supra.

⁵⁶ 744 Phil. 201 (2014).

⁵⁷ *De Guzman-Fuerte v. Estomo*, supra note 44, citing *Ocampo v. Heirs of Bernardino Dionisio*, 744 Phil. 716, 724 (2014).

⁵⁸ 745 Phil. 40 (2014).

⁵⁹ Id. at 52, citing *Dr. Carbonilla v. Abiera, et al.*, supra note 51 at 482.

⁶⁰ *Jose v. Alfuerto, et al.*, supra note 54 at 317-318.

⁶¹ *Padre v. Malabanan*, 532 Phil. 714 (2006).

⁶² Supra note 44.

⁶³ Id. at 661, citing *Echanes v. Sps. Hailar*, 792 Phil. 724 (2016).

remedy.⁶⁴

Remarkably, in *Suarez v. Emboy*,⁶⁵ a case similar to the one at hand, the Court dismissed an action for unlawful detainer due to the failure of the plaintiff-owner Carmencita to prove the fact of tolerance. Carmencita claimed that she purchased the property from the registered owners, who allowed the defendant-occupants to stay in the property by tolerance. Thus, as the successor-in-interest, she is entitled to possession and has a right to eject the occupants. The Court rejected her arguments and stressed that the complaint for unlawful detainer fails in the absence of clear proof of tolerance:

In the case at bar, the first requisite mentioned above is markedly absent. Carmencita failed to clearly allege and prove how and when the respondents entered the subject lot and constructed a house upon it. Carmencita was likewise conspicuously silent about the details on who specifically permitted the respondents to occupy the lot, and how and when such tolerance came about. Instead, Carmencita cavalierly formulated a legal conclusion, sans factual substantiation, that (a) the respondents' initial occupation of the subject lot was lawful by virtue of tolerance by the registered owners, and (b) the respondents became deforciants unlawfully withholding the subject lot's possession after Carmencita, as purchaser and new registered owner, had demanded for the former to vacate the property. It is worth noting that the absence of the first requisite assumes even more importance in the light of the respondents' claim that for decades, they have been occupying the subject lot as owners thereof.⁶⁶ (Citations omitted)

In addition, it bears stressing that the owner of real property may not wrest possession from the lawful occupant by conveniently filing an action for unlawful detainer. This was the important dictum laid down *Quijano v. Amante*,⁶⁷ *Spouses Agosto Munoz v. Court of Appeals*,⁶⁸ *Javelosa v. Tapus*,⁶⁹ and *Lozano v. Fernandez*.⁷⁰ In these cases, the Court favored the lawful occupant who had been residing in the property for several years as against the purchaser and/or owner.⁷¹ The Court refused to disturb possession, and allowed the occupants to peacefully remain in the disputed property on account of the owners' failure to prove tolerance.

Based on the foregoing tenets, it becomes all too apparent that the CA correctly dismissed Wilfredo's action for unlawful detainer on account of his failure to prove his claim of tolerance. Moreover, as aptly observed by the CA, proof of tolerance is all the more imperative considering that Bonifacio was born, raised and has been living in the subject property for more than seventy years as

⁶⁴ *Jose v. Alfuerto, et al.*, supra note 54 at 319.

⁶⁵ Supra note 46.

⁶⁶ Id. at 330-331.

⁶⁷ Supra note 58.

⁶⁸ 288 Phil. 1001 (1992).

⁶⁹ G.R. No. 204361, July 4, 2018.

⁷⁰ Supra note 49.

⁷¹ *Javelosa v. Tapus*, supra note 69.

a legal heir of Moises, and not through Wilfredo's permission. He cannot be peremptorily ousted through the simple expedient of an action for unlawful detainer.

Lastly, a word of caution is in order. The dismissal of the instant case does not preclude the availment of other more appropriate legal remedies to obtain possession of the subject property. It simply serves as a reminder that in filing an action for unlawful detainer, all jurisdictional facts must be proven by a preponderance of evidence.

WHEREFORE, the Petition is **DENIED**. The August 4, 2017 Decision and January 25, 2018 Resolution of the Court of Appeals in CA-G.R. SP No. 149851 are **AFFIRMED**.

SO ORDERED."

By authority of the Court:

MISAEAL DOMINGO C. BATTUNG III
Division Clerk of Court

By:


RUMAR D. PASION
Deputy Division Clerk of Court 8/28
2/23/21

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The Presiding Judge
REGIONAL TRIAL COURT
Branch 115, 1300 Pasay City
[Civil Case No. M-PS4-15-19028-CV-R00-00]

Metropolitan Trial Court
Branch 45, Pasay City
[Civil Case No. M-PSY-15-19028-CV]

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