

MALAYSIA AUTOMOTIVE, ROBOTICS AND IOT INSTITUTE & ANOR v
DATO' TS MOHAMAD MADANI BIN SAHARI & ORS

[CaseAnalysis](#)
| [2025] MLJU 393

[Malaysia Automotive, Robotics and IOT Institute & Anor v Dato' Ts
Mohamad Madani bin Sahari & Ors \[2025\] MLJU 393](#)

Malayan Law Journal Unreported

HIGH COURT (KUALA LUMPUR)
ONG CHEE KWAN J
SUIT NO WA-22NCC-442-07 OF 2024
6 February 2025

Austen Emmanuel Pereira (with Chow Chen Yie) (Rosli Dahlan Saravana Partnership) for the plaintiff.
*Velary Thrisha Velayathan (with **Che Aidil** Erfan bin Che Afero and V S Viswanathan) (The Chambers of Shamsul Qamar) for the first defendant.*
Vishnu Kumar (with Pannirselvam Mannar and Yashodhan Reddy Pannirselvam (PDK)) (Sandosh Anandan)) for the second, third, fourth and fifth defendants.
Muhammad Faisal bin Moideen (with Julian Ch'ng Wei Shen and Muhamad Haziq Areef bin Azlee) (Moideen & Max) for the sixth, seventh and eight defendants.
Wong Kah Hui (with Emily Chua Yan Feng) (KH Wong & Co) for the ninth, 10th and 11th defendants.
Nur Amirah bt Iberahim (Nurainie Haziqah & Co) for the 12th defendant.
Muhd Fadzli bin Muhd Yusoff (Khairul Fadzli Amin & Co) for the 13th defendant.
Prem Ramachandran (with Harjoth Singh a/l Darshan Singh and Poh Jun Yang) (Rozana Segran & Co) for the 14th defendant.
Nicole Wan Yee Heng (Shook Lin & Bok) for PBB and PIBB.
Nicole Wan Yee Heng (Shook Lin & Bok) mentioning on behalf of solicitors for MBB and MIB.
Hazel Lim Pey Tsyrr (Kee Sern, Siu & Huey) for CIMB & CIMB Islamic.

Ong Chee Kwan J:

JUDGMENT

Introduction

[1] This judgment covers the applications under the following Enclosures, namely:

- (1) *inter parte* hearing of Enclosure 3 being the Plaintiffs' application for Proprietary Injunction against the 2nd, 6th and 9th Defendants ("**Service Providers**" or "**SPs**") and for Mareva Injunction against the 1st to 14th Defendants ("**Mareva Defendants**");
- (2) *inter parte* hearing of Enclosure 111 being the 14th Defendant's application to Set Aside the *ex parte* order granted to the Plaintiff in respect of Enclosure 3 on 9.7.2024 (**Encl. 111**);

- (3) *inter parte* hearing of Enclosures 120 to Enclosure 122 being the 6th to 8th Defendants' applications to Set Aside the *ex parte* order granted to the Plaintiff in respect of Enclosure 3 on 9.7.2024 (**Encls. 120 to 122**).

[2] The Plaintiffs had premised his application in Enclosure 3 based on an alleged fraudulent scheme, involving public monies, purportedly orchestrated by multiple individuals and companies who were said to have conspired to defraud and in fact did defraud the Plaintiffs.

[3] The alleged fraudulent scheme purportedly involved former senior executives of the Plaintiffs, in particular the 1st Defendant ("**Madani**"), the 12th Defendant ("**Asyraf**") and 13th Defendant ("**Sazali**"). These individuals were alleged to have abused their positions and power within the Plaintiffs' organizations to conspire with others (the 3rd to 5th, 7th to 8th and 10th to 11th Defendants) and their respective corporate vehicles (2nd Defendant ("**AKSB**"), 6th Defendant ("**PWP**") and 9th Defendant ("**WHSB**"). The Plaintiffs claimed that they were defrauded through the awarding of primarily three letters of appointment to the SPs ("**LOAs**") to carry out works for the Employability and Re-Training Local Talent Programme ("**ERT Programme**").

[4] The Plaintiffs contended that a total sum of RM13,347,686.00 was released to the SPs ("**Plaintiffs' Monies**") and RM1,011,317.00 as allowances to the other individuals who purportedly were participants who have completed the ERT Programmes ("**Allowance**"). However, the funds intended for the Programmes were not properly used for their intended purpose.

[5] In this action, the Plaintiffs now seek to recover the loss and damage amounting to RM14,359,003.00 ("**Total Loss and Damages**"). On the ground that there were risks of dissipation of assets by the Mareva Defendants and the Plaintiffs' proprietary interest in the Plaintiffs' Monies, the Plaintiffs obtained an *ex parte* injunction against the Mareva Defendants to freeze their assets and to preserve Plaintiffs' Monies on 9.7.2024 ("**the Ex Parte Order**").

[6] In Enclosure 3, the Plaintiffs were also granted various third-party discovery orders against the banks to obtain necessary bank documents. This discovery order was said to be essential for proprietary relief to trace the Plaintiffs' Monies, and to identify any further perpetrators of fraud, conspiracy, bribery, or corruption. However, this judgment does not concern this part of the order for discovery.

[7] After hearing oral submissions from counsel, this Court found that there was non-disclosure of material facts by the Plaintiff at the *ex parte* hearing of Enclosure 3. This Court also found that the Plaintiffs had not shown a serious issue to be tried in respect of the Plaintiffs' claims premised on fraud. The Plaintiffs also failed to demonstrate that there was risks of dissipation of assets by the Defendants, especially given the unexplained delay by the Plaintiffs in filing the application for the injunctions.

[8] By reasons of the aforesaid, the *Ex Parte* Order was set aside and the Plaintiffs' application for *inter parte* injunctions under Enclosure 3 was also dismissed.

Background Facts

[9] The 1st Plaintiff, MARii, is a company limited by guarantee under the Ministry of Investment, Trade and Industry ("**MITI**"). The current Deputy CEO of MARii, Nizmar, is holding 100% of the total issued shares of the 2nd Plaintiff, A2Z on behalf of MARii.

[10] The 1st Defendant, Madani, at the material time, was the CEO of MARii and Managing Director A2Z, both until 8.5.2022.

[11] The 12th Defendant, Asyraf, at the material time, was a senior executive in charge of the legal and project management matters of the Plaintiffs. The 13th Defendant, Sazali, at the material time, was the CFO of MARii and was seconded to A2Z to be in charge of the financial matters of the Plaintiffs. Asyraf and Sazali shall be collectively referred to as "**ex-employees**".

[12] The 2nd and 9th Defendants are companies, together with the 6th Defendant, which is a partnership, were SPs that were appointed by the Plaintiffs to carry out works for the ERT Programme.

[13] The 3rd to 5th, 7th to 8th and 10th to 11th Defendants were either directors or partners of the respective SPs ("**Directors and/or Partners of the SPs**"). The identity and relevance of these Defendants can be summarised as follows:

Service Providers	Defendants	Position
2nd Defendant (“AKSB”) (Sdn. Bhd.)	3rd Defendant	Director & Shareholder
	4th Defendant	Director & Shareholder
	5th Defendant	Director & Shareholder
6th Defendant, (“PWP”) (Limited Liability Partnership)	7th Defendant	Partner
	8th Defendant	Partner
9th Defendant, (“WHSB”) (Sdn. Bhd.)	10th Defendant	Director & Shareholder
	11th Defendant	Director & Shareholder

[14] The 14th Defendant, Kuhan, was, at all material times, alleged to be acting as a “middleman” and or “broker” for the appointments of AKSB, PWP and WHSB and/or soliciting the same. He was allegedly also responsible for the wrongdoings of the 15th to 27th Defendants.

The Alleged Fraud

[15] On or around 19.7.2019, a proposal was brought to MARii’s Board of Directors (“BOD”), for MARii to establish a subsidiary. The BOD principally agreed and approved the proposed incorporation of a wholly owned subsidiary subject to obtaining the consent from MITI and or approval from the Minister or Ministry charged with the responsibility for companies.

[16] The Plaintiffs claimed that on or around 28.10.2020, A2Z was wrongfully and fraudulently established by Madani with him being a shareholder holding 100% of shares of A2Z on behalf of MARii *vide* a wrongful and or unlawful Deed of Trust dated 2.11.2020. It was alleged that Madani did not get any of the approval to fulfil the condition as required by the BOD.

[17] On or about 2.4.2021, MARii entered into a contract with the Government of Malaysia *via* MITI for the disbursement of the fund known as the KWC-19 Fund. Part of the KWC-19 Fund, namely RM37,993,040.00 was intended to fund the ERT Programme. The objective of the ERT Programme was, *inter alia*, to provide classes and training that will assist unemployed and retrenched workers to secure guaranteed job placements in various industries during the COVID-19 pandemic, arguably the most challenging period of this country’s history.

[18] On or around 9.6.2021, Madani and or the ex-employees caused MARii to appoint A2Z as an administrator for the ERT Programme *vide* a Letter of Appointment (“A2Z LOA”). Madani, in his (then) capacity as director and CEO of both MARii and A2Z, caused A2Z to appoint the SPs to execute the ERT Programme.

[19] The dates and events can be summarised as follows:

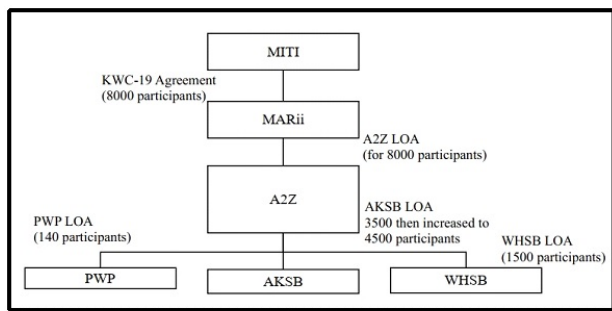
Dates	Events
19.7.2019	Proposal to BOD for the establishment of a subsidiary. The same was conditionally approved.
28.10.2020	Madani established A2Z as a subsidiary.
2.4.2021	MARii and MITI entered into KWC-19 Agreement.
20.4.2021	PWP was appointed by A2Z as one of the SPs.
9.6.2021	Madani caused A2Z to be appointed by MARii as an administrator.
25.6.2021	AKSB was appointed by A2Z as one of the SPs.
1.7.2021	AKSB was again appointed by A2Z as one of the SPs.

Dates	Events
28.8.2021	WHSB was appointed by A2Z as one of the SPs.

[20] The Plaintiffs' pleaded case is that the above appointments were wrong, irregular, unlawful, and or illegal. In essence, the above appointments were supposed to be conducted by way of a tender but the same was never done due to the instruction and or action of Madani, Asyraf, and or the SPs. There was also no merit and or consideration in awarding these appointments. More specifically, the Plaintiffs referred to the pre-appointment of PWP before the appointment of A2Z, and the fact that AKSB and WHSB were awarded in a short time without any proof of a proper tender exercise.

[21] Further, the plaintiffs contended that the 5th Defendant, Mugilan, had witnessed the acceptance of WHSB as an SP, despite them coming from different companies and the relationship and or conflict of interest was never disclosed. It was also publicly reported that Kuhan was involved in assisting AKSB in getting the appointment by bribing Madani.

[22] The contractual relationship can be summarized as follows:



[23] The crux of the SPs' work was to provide training and support to participants of the ERT Programme in improving their skills to assist them in job placements. The details of the SPs' appointment are as follows:

Service Providers	PWP	AKSB	WHSB
Date of Letter of Appointment	20.4.2021	25.6.2021/1.7.2021	28.8.2021
Period of Appointment	1.1.2021 to 31.12.2021	1.7.2021 to 30.9.2021	1.9.2021 to 30.11.2021
Key Performance Indicator (Participants)	140	3500/ 4500	1500
Claimable Amount Per Participant (RM)	1,101.00	2,666.66/2,666.66	2,888.88

Service Providers	PWP	AKSB	WHSB
Additional Claimable Amount for MARiiKerja per Participant (RM)	250.00	-	-
Maximum Participants for MARiiKerja	4000	-	-
Total Claimable (RM)	1,154,140.00	9,333,310.00/ 12,000,000.00	4,333,320.00

[24] The SPs would only be paid for the claimable amount subject to the completion of the 15-day training and successful job placement of the participants. This is evident from each of the LOAs:

(1) **See Clause 6.4 of PWP LOA at page 61 of Encl 9:**

“6.4 The claimable amount for the Service Provider shall be at a maximum rate of **Ringgit One Thousand One Hundred One (RM1,101.00) only** per participant for a **maximum of 140 participants AND Ringgit Two Hundred Fifty (RM250.00) only** per participant for a maximum of 4,000 participants for the purpose of system development, integration and maintenance of MARiKerja. The claimable amount for the Service Provider in this clause is subject to the completion of the 15-day training AND successful job placement of the participants.”

(2) **See Clause 6.3 of both AKSB LOAs at page 79 and 98 of Encl 9:**

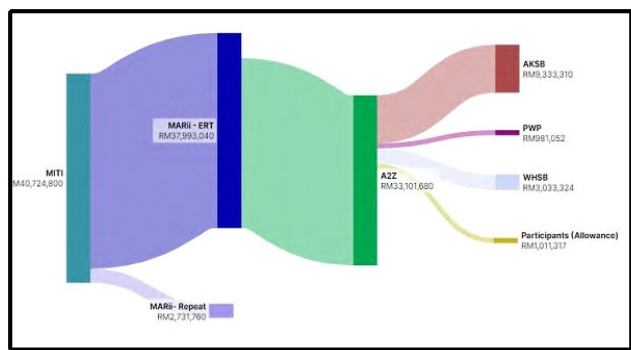
“6.3 The claimable amount for the Service Provider shall be at a maximum rate of **Ringgit Two Thousand Six Hundred Sixty-Six and Cent Sixty-Six (RM2,666.66) only** per participant. The claimable amount for the Service Provider in this clause is subject to the completion of the 15-day training AND successful job placement of the participants.”

(3) **See Clause 6.3 of WHSB LOA at page 119 of Encl 9:**

“6.3 The claimable amount for the Service Provider shall be at a maximum rate of **Ringgit Two Thousand Eight Hundred Eighty-Eight and Cent Eighty- Eight (RM2,888.88) only** per participant. The claimable amount for the Service Provider in this clause is subject to the completion of the 15-day training AND successful job placement of the participants.”

[25] The Plaintiffs paid RM13,347,686.00 to the SPs for works purportedly done and RM1,011,317.00 as allowances to the participants who have purportedly completed the training and received successful job placement. In this regard, the Plaintiffs denied the claims by the SPs of their performance under their respective LOAs.

[26] The following diagram illustrates the flow of monies paid:



[27] The Plaintiffs also relied on the MITI Audit Report, the relevant portions of the which have been reproduced in the Statement of Claim. The MITI Audit Report is an independent and external audit report that was commissioned by MARIi to investigate and report on the ERT Programme.

Court's Considerations

No serious issue on causes of action premised on fraud

[28] At the outset, it must be stated that the Plaintiffs' application for the proprietary and mareva injunction was premised on the claims that A2Z was wrongfully and fraudulently established by Madani with him being a shareholder holding 100% of shares of A2Z on behalf of MARIi *vide* a wrongful and or unlawful Deed of Trust dated 2.11.2020. It was alleged that Madani had proceed with the incorporation of A2Z notwithstanding that the requisite condition, namely the approval from MITI and the relevant Minister or Ministry as required by the BOD had not been obtained.

[29] The Plaintiffs also claimed that Madani and or the ex-employees had wrongfully and or unlawfully caused MARIi to appoint A2Z as an administrator for the ERT Programme *vide* A2Z LOA and thereafter Madani, in his (then) capacity as director and CEO of both MARIi and A2Z, had wrongfully and or unlawfully caused A2Z to appoint the SPs to execute the ERT Programme.

[30] Further, the Plaintiffs claimed that they were defrauded by the 1st to 14th Defendants into appointing the SPs as contractors to undertake the works for the ERT Programme and to think that the works undertaken by the SPs were done and completed properly and in accordance with the LOAs, which later the Plaintiffs made the payments to the SPs.

[31] However, at the *inter parte* hearing of Enclosure 33, the facts that were disclosed to the Court were as follows:

- a) the MARIi's BOD had approved A2Z as its subsidiary company on 19.7.2019 and when Madani caused A2Z to be incorporated on 28.10.2020, it was in pursuant to the aforesaid MARIi's approval of 19.7.2019;
- b) More specifically, the BOD had agreed that Madani would registered himself as a shareholder holding 100% of shares of A2Z on behalf of MARIi because MARIi needed the consent from MITI and or approval

from the Minister/Ministry charged with the responsibility for companies for MARii to own the shares in A2Z. This was the reason that Madani had executed the Deed of Trust dated 2.11.2020;

- c) further, on 17.5.2020, MARii's BOD had already approved A2Z as the Administrator of the ERT Programme. Thus, when Madani caused A2Z to be appointed as the administrator of the ERT Programme on 9.6.2021, it was made pursuant to the aforesaid approval. It was pursuant to that approval that Madani had caused A2Z to issue the LOAs to AKSB, WHSB and PWP;
- d) the original intention of the ERT Programme was to train 8000 participants. However, because of the Covid-19 Movement Control Order (MCO) and the upper limit of RM10 million, the figure of 8000 was reduced to 5000 participants to be trained by December 2021. The balance of 3000 was to be carried over to 2022;
- e) a Supplemental MITI Agreement was entered into by MITI and MARii on 13.9.2022 which was stated to come into effect on 2.4.2021. This Supplemental Agreement set out the appropriate timelines for the training of the 5000 participants and by December 2021, the SPs had trained 5000 participants;
- f) it was only on 21.12.2021, at the BOD Meeting that the Company Secretary had advised the attendees (including Madani) that the SSM had, on 30.09.2021, rejected the incorporation of A2Z as a subsidiary company of MARii;
- g) this prompted the MARii's BOD on the same day, ie 21.12.2021, to direct that all programmes, money or assets that was given to A2Z by MARii to be "reversed or taken back to MARii and thereafter, to dissolve A2Z accordingly." Hence, Madani was instructed to prepare the details and status of programmes, funds, assets and any other contracts entered for and on behalf of MARii to be tabled to its BOD in the next BOD Meeting which Madani had duly complied with.

[32] Based on the aforesaid facts, there was no element of fraud at all in the incorporation of A2Z and on its appointment as the Administrator of the ERT Programme. Neither was there any element of fraud shown in the LOAs issued by A2Z to the SPs.

[33] When learned counsel for the Plaintiffs was pressed by this Court to explain the basis for the Plaintiffs' claim against Madani for fraud, it was disclosed for the first time that the alleged fraud against Madani for establishing A2Z and appointing A2Z as Administrator of the ERT Programme was premised entirely on the fact that on 30.9.2021, SSM had rejected the incorporation of A2Z as a subsidiary company of MARii. It was alleged that by reason of the said rejection, the establishment of A2Z and the actions of A2Z thereafter by Madani were fraudulent.

[34] When counsel for the Plaintiffs was asked how it could be contended that Madani's action in establishing A2Z and appointing A2Z as Administrator of the ERT Programme could be said to be fraudulent when at the material times SSM had not rejected the same and Madani was merely acting based on the approvals of the MARii's BOD, counsel was unable to provide the Court with any satisfactory answers.

[35] Quite clearly, this was a case where Madani had proceeded in accordance with the approvals of the MARii's BOD who were at all times informed of and had approved the incorporation of A2Z and its appointment as the Administrator of the ERT Programme. The parties had acted on the assumption that the approval of A2Z as a subsidiary of MARii would be granted by MITI and the relevant Minister or Ministry as a matter of course. However, when SSM had rejected the same, the MARii's BOD was caught wrongfooted and had to direct for the reversal of all of A2Z's transactions.

[36] Indeed, learned counsel for the Plaintiffs was not able to show any fraudulent act on the part of Madani at all in respect of the incorporation of A2Z and the appointment of the same as Administrator of the ERT Programme. Neither was the Plaintiffs able to substantiate their claims that Madani had a personal relationship with the SPs such that he had breached his duty of disclosure to the MARii's BOD in awarding the LOAs.

[37] More significantly, the Plaintiffs were not able to show that Madani and or the ex-employees had received any monetary benefits personally from any of the SPs from the monies that were paid out by the Plaintiffs under the respective LOAs for the sole or exclusive purpose of running the ERT Programme. In other words, the Plaintiffs simply did not have any evidence in support of their allegation of misappropriation of monies against Madani and the ex- employees.

[38] In fact, critical to the Plaintiffs' claim for fraud was the reliance on the MITI Audit Report which was concluded

sometime on 18.3.2022. This was an audit conducted on the ERT Programme that was administered by A2Z. Upon perusal of the MITI Audit Report, what was disclosed did not at all support the Plaintiffs' claims of fraud by Madani and or the ex-employees at all. Instead, the document merely highlighted some irregularities and inconsistencies in the claims made by the SPs in the performance of their obligations for the ERT Programme.

[39] The claims that the Plaintiffs were defrauded by the 1st to 14th Defendants into appointing the SPs as contractors to undertake the works for the ERT Programme with the view to dissipating monies intended to be used for the ERT Programme were also unsupported by the MITI Audit Report which had focused on the actual performance of the SPs under their respective LOAs and the accuracy of their claims thereunder. Indeed, the Plaintiffs have chosen to sue the SPs for breach of contracts in this action and have not opted for the cause of action based on fraudulent misrepresentation [See: *Tech Food Ingredients Sdn Bhd & Anor v. Blue Seal (M) Sdn Bhd & Ors* [\[2024\] MLJU 243](#)]

[40] To my mind, the aforesaid meant that the Plaintiffs' claim for proprietary injunction, constructive trust, Quistclose trust and knowing or dishonest assistance premised upon the allegation of fraud become unsustainable based on the available evidence before this Court at this stage [See: *Menk Sdn Bhd v Joerg Hugo Schmidt* [\[2009\] 3 MLJ 205](#)].

[41] Accordingly, it is the judgment of this Court that the Plaintiffs had failed to demonstrate a serious issue to be tried in respect of their claims based on fraud and the related causes of action premised upon the existence of fraud.

No risk of dissipation

[42] Quite apart from the absence of any serious issues to be tried, it is also my judgment that Enclosure 3 could not be sustained by reason of delay in filing the application and the lack of any evidence in support of the claim that injunctive remedies are needed to prevent any risks of dissipation of assets by the Defendants herein.

[43] The monies that were paid out to the SPs in respect of the ERT Programme were made sometime in 2021, almost 3 years prior to the commencement of the Plaintiffs' action herein. The MITI Audit Report was issued on 18.3.2022, a good 2 years prior to the filing of the application under Enclosure 33. No demands were ever made by the Plaintiffs after the MITI Audit Report against the SPs seeking either an account of the monies paid and or alleging any fraud in respect of the services rendered pursuant to the SPs' respective LOAs.

[44] Although it is true that the Plaintiffs had lodged police reports against the SPs sometime on 16.3.2023, the Plaintiffs only chose to file this action against the Defendants more than 1 year later.

[45] The delay in the filing of this action and particular, Enclosure 33 was never satisfactorily explained by the Plaintiffs in their affidavits affirmed before this Court. Such delay in fact put paid to any claims of risks of dissipation of assets by the Defendants. In this regard, there are ample case law standing for the proposition that a plaintiff must move with promptness and alacrity when seeking equitable injunctive reliefs from the Court [See: *Best Electronics Sdn Bhd v. Chen Li Yeng* [\[1997\] MLJU 167](#); *Tokyo Tsusho (M) Sdn Bhd v. Lau Kum Foon & Ors* [\[2019\] 10 MLJ 596](#)].

[46] Further, the Plaintiffs had not been able to demonstrate that the Defendants had taken any steps to dissipate their assets to justify their claims that appropriate injunctive reliefs were needed to safeguard any judgment that they may obtain from being frustrated. It is trite that it is only where such a risk is properly established that the Court would impose what could potentially be a burdensome and harsh order before the merits of the claims have yet to be finally determined [See: *Lee Kai Wuen & Anor v Lee Yee Wuen* [\[2022\] MLJU 3411](#); *Shefali Shenoy Choo Suat Chin & Ors v. Potential Excelerate Group Ltd & Ors* [\[2022\] 10 MLJ 800](#)]

Conclusion

[47] In the premises, this Court dismissed with costs the Plaintiffs' *inter parte* applications for Proprietary Injunction against the 2nd, 6th and 9th Defendants and for Mareva Injunction against the 1st to 14th Defendants.

[48] Enclosure 111 being the 14th Defendant's application to Set Aside the *Ex Parte* Order granted to the Plaintiffs in respect of Enclosure 3 on 9.7.2024 was allowed with costs.

[49] Enclosures 120 to Enclosure 122 being the 6th to 8th Defendants' applications to Set Aside the *Ex Parte* Order granted to the Plaintiff in respect of Enclosure 3 on 9.7.2024 was also allowed with costs.

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