

SOUTH AFRICA / JUDGMENT

Dries v Venter NO and Others (24094/04) [2005] ZAGPHC 37; 2005 (6) SA 67 (T) (1 April 2005) [2005] ZAGPHC 37

COURT

High Courts - Gauteng

BEFORE

Legodi MF

CASE / FILE NUMBER

24094/04

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IN THE HIGH COURT OF SOUTH AFRICA (TRANSVAAL PROVINCIAL DIVISION) REPORTABLE Case no. 24094/04 Judgement reserved: 24/03/04 Judgment delivered: 1/4/2005 In the matter between: HELENA ELIZABETH DRIES Applicant and SIEGFRIEDT VENTER NO BAREND HERMAN VENTER NO SIEGFRIEDT EDWARD VENTER NO 1st Respondent 2nd Respondent 3rd Respondent JUDGMENT LEGODI J INTRODUCTION 1. This is an application in terms whereof the applicant is asking for an order evicting the respondents and all other persons from the farm known as KLAVERVALLEY 542 registration division KR Northern Province (hereinafter referred to as the property). The applicant is further asking for an order in terms whereof the sheriff of Roedan district Roedan is authorised and ordered with the help of the South African Police Services to evict the respondents and all other persons in possession of and occupying the property, in the event the respondents and all the persons on the property refuse to.. ,lvacate the property within seven days upon the granting of an order evicting the respondents from the property. BACKGROUND 2. The applicant is the owner and registered title holder of the property. The respondents are sued in their representative capacities as trustees of Uitloop Familie Trust (hereinafter referred to as a trust). 3. On the 5 March 2004 the applicant and the trust represented by the first respondent finally concluded a written agreement, the agreement having been signed on the 30 January 2004 and 5 March 2004 by the applicant and first respondent respectively. Of importance the terms of the agreement were: 3.1 That the applicant was to let the property to the respondents for a period of one year starting from the 1 September 2003 to the 31 August 2004. 3.2 That the respondents were granted right of option to renew the lease agreement for another period of one year on certain conditions. 3.3 That in the event the respondents decide to exercise their right of option to renew the lease agreement they shall do so, by giving the applicant a notice of at least sixty days before the expiry of the existing lease agreement. 3.4 That any notice in terms of the lease agreement shall be in writing and shall be delivered by hand or by registered post and it shall be presumed that such notice was received

within five days from the date on which it was sent by registered post. 3.5 That no agreement contrary to the terms and conditions of the existing written agreement shall be valid unless such an agreement or variation is reduced into writing and signed by the parties. 4. On the 9 August 2004 the applicant's attorneys wrote a letter to the respondents in terms whereof the respondents were warned that the lease agreement was expiring at the end of August 2004 and that the property must be vacated by the end of the lease agreement being the end of August 2004. To this letter the respondents' attorneys responded and alleged in the letter dated the 19 August 2004 that an oral agreement was concluded on the 21st June 2004 in terms whereof the applicant agreed to extend the lease agreement for another period of one year and that the respondents did not have to give a written notice as required by clause 4.3 read with clause 19.5 requiring the notice to be in writing and to be delivered not later than sixty days before the expiry of the lease agreement. 5. The alleged oral agreement is denied by the applicant and secondly the applicant is of the view that the said oral agreement is invalid for non compliance with the provisions of clause 4.3 requiring a notice of renewal within sixty days before the expiry of the existing lease agreement, clause 19.5 requiring a notice to be in writing and delivered by hand or registered post and clause 21.1 requiring any variation of the existing lease agreement to be in writing. 6. At the beginning of the hearing of this matter counsel on behalf of the respondents took the point that the applicant was under obligation to comply with the provisions of Prevention of Illegal Eviction from unlawful occupation of Land Act 19 of 1998 (hereinafter referred to as PIE) and in particular section 4 thereof. Counsel on behalf of the applicant was however of the view that the provisions of PIE were not applicable. **ISSUE RAISED** The issue which was therefore raised which had to be decided first as a point in limine was whether or not the applicant was obliged to comply with the provisions of section 4 of the PIE Act. **DISCUSSIONS AND SUBMISSIONS** 7. Both parties relied heavily on the decision in the matter of *Ndlovu v Ngcobo, Bekker and Another v Fika* 2003 (1) SA 113 SCA. I was also referred to the case of *Shoprite Checkers (Pty) Ltd v Jardim* 2004 (1) SA 502. In terms of PIE a building or structure includes any hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter. On the other hand, evict or eviction in terms of PIE means to deprive a person against his or her will of occupation of a building or structure or the land on which such a building or structure is erected. Harms JA in *Ndlovu's* supra said the following: A further area of concern is the lease of commercial properties. Does it fall within the purview of Pie? Prima facie the answer would be in the affirmative because of definition of building or structure which includes any hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter. The word "includes" is a general term of extension. It may however depending upon the circumstances, be one of exhaustive definition and synonymous with "comprise". In this instance, having regard to the history of the enactment with, as already pointed out, its roots in sections 26(3) of the Constitution which is concerned with rights to one's home, the preamble to PIE which emphasises the right to one's home and the interest of vulnerable persons, the building listed and the fact that one is ultimately concerned with any other form of temporary or permanent dwelling or shelter, the ineluctable conclusion is that, subject to the *ejusdem* generic rule, the terms were used exhaustively. It follows that building or structures that do not perform the function of dwelling or shelter for humans do not fall under PIE and since juristic persons do not have

dwellings, their unlawful possession is similarly not protected by PIE". Repeatedly in Shoprite Checkers(Pty) Ltd it was found that PIE was not applicable to ejectment from non-residential property.⁸ Now coming back to the circumstances of the present case, the property in question is a farm which has been leased to a trust represented by the respondents, the lease had expired, the applicant as the lessor wants to evict the respondents from the property together with all other persons on the property or farm, the respondents are resisting the eviction on the ground that the lease agreement has been extended, an issue which is disputed by the applicant, there is a house on the property which was being used for dwelling by the first respondent, and on the papers before me no indication that there are or there are no farm workers residing on the farm and lastly in terms of the lease agreement said to have expired, workers and members of the family of the lessee brought onto the farm were to be affected by the terms and conditions of the agreement.⁹ On behalf of the applicant it was argued that because a trust is a juristic person it therefore cannot have a dwelling. Therefore its unlawful possession cannot similarly be protected by PIE. A dwelling is defined as a house, flat or apartment etc, where a person or persons live. A dwelling house on the other hand is described as a house that people live in, not one that is used as an office (see Oxford Dictionary 6th edition). Indeed as indicated in the two cases referred to earlier in this judgment, buildings or structures that do not perform the function of dwelling or shelter for humans (my own emphasis) do not fall under PIE. Mr Heyns on behalf of the applicant submitted that the house on the farm was occupied by the trust through the respondents. This might be so, the question rather should be whether these humans who occupied the property on behalf of the trust, so occupied the house on the farm as an office, for business purpose or as a dwelling or residence. According to Mr Heyns it is irrelevant whether or not the first respondent lives in this house alone or with members of his family for as long as the property is occupied on behalf of the trust, juristic person. I was not particularly impressed with this submission, because it really fails to take the circumstances of the case, and the intention of the legislature under PIE. Clearly the first respondent was not only occupying the property particularly the house on behalf of the trust,⁷ but he was also living in this property. This should fall squarely within the ambit of PIE.¹⁰ One should also consider the sensitivity within which the PIE Act was brought into being. Its roots is indeed to be found in section 26(3) of the Constitution which is concerned with rights to one's home, the preamble to PIE which emphasises the right to one's home and the interest of vulnerable persons. In my view the vulnerable persons would be those farm workers who might be on the property particularly that one is dealing with a property which is a farm in a most unsophisticated area. None of the parties said anything about the present or absence of farm workers on this property. I have been urged not to concern myself with this issue particularly that the first respondent on behalf of the trust himself did not highlight it. Effectively counsel on behalf of the applicant was suggesting that I cannot merely raise the issue. Historically farm workers were or are the most abused persons when it relates to eviction on a farm land. So much vulnerable that a number of legislations including the PIE Act were aimed at protecting these persons. It should certainly concern and worry me if no clear indication is given that such persons would not be affected. The provisions of section 4 of PIE are intended to ensure that no stone is left unturned in bringing notice of eviction to the attention of those who might be affected by the impending eviction. The

applicant's main prayer for example includes all other persons to be evicted from the property. This cannot be done without the necessary notice. CONCLUSION 11. Consequently I conclude by finding that the applicant was obliged to comply with the provisions of section 4 of PIE. The application by the applicant is premature and is therefore struck off from the roll with costs. LEGODI M F JUDGE OF THE HIGH COURT Applicant's attorneys: JD Beyers & Day Ingelyf Brooklyn, Pretoria 012 346 7270 Counsel for the Applicant: G F Heyns Respondents' attorneys: Amanda De Wet Brooklyn, Pretoria 012 346 3460 Counsel for the Respondents: A P J Els Heard on: 24/3/2005

IN THE HIGH COURT OF SOUTH AFRICA (TRANSVAAL PROVINCIAL DIVISION)

1st Respondent 2nd Respondent 3rd Respondent

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LEGODI J

INTRODUCTION

1.

.. ,lvacate the property within seven days upon the granting of an order evicting the respondents from the property. BACKGROUND 2. The applicant is the owner and registered title holder of the property. The respondents are sued in their representative capacities as trustees of Uitloop Familie Trust (hereinafter referred to as a trust). 3. On the 5 March 2004 the applicant and the trust represented by the first respondent finally concluded a written agreement, the agreement having been signed on the 30 January 2004 and 5 March 2004 by the applicant and first respondent respectively. Of importance the terms of the agreement were: 3.1 That the applicant was to let the property to the respondents for a period of one year starting from the 1 September 2003 to the 31 August 2004. 3.2 That the respondents were granted right of option to renew the lease agreement for another period of one year on certain conditions. 3.3 That in the event the respondents decide to exercise their right of option to renew the lease agreement they shall do so, by giving the applicant a notice of at least sixty days before the expiry of the existing lease agreement. 3.4 That any notice in terms of the lease agreement shall be in writing and shall be delivered by hand or by registered post and it shall be presumed that such notice was received within five days from the date on which it was sent by registered post. 3.5 That no agreement contrary to the terms and conditions of the existing written agreement shall be valid unless such an agreement or variation is reduced into writing and signed by the parties. 4. On the 9 August 2004 the applicant's attorneys wrote a letter to the respondents in terms whereof the respondents were warned that the lease agreement was expiring at the end of August 2004 and that the property must be vacated by the end of the lease agreement being the end of August 2004. To this letter the respondents' attorneys responded and alleged in the letter dated the 19 August 2004 that an oral agreement was

concluded on the 21st June 2004 in terms whereof the applicant agreed to extend the lease agreement for another period of one year and that the respondents did not have to give a written notice as required by clause 4.3 read with clause 19.5 requiring the notice to be in writing and to be delivered not later than sixty days before the expiry of the lease agreement.⁵ The alleged oral agreement is denied by the applicant and secondly the applicant is of the view that the said oral agreement is invalid for non compliance with the provisions of clause 4.3 requiring a notice of renewal within sixty days before the expiry of the existing lease agreement, clause 19.5 requiring a notice to be in writing and delivered by hand or registered post and clause 21.1 requiring any variation of the existing lease agreement to be in writing.⁶ At the beginning of the hearing of this matter counsel on behalf of the respondents took the point that the applicant was under obligation to comply with the provisions of Prevention of Illegal Eviction from unlawful occupation of Land Act 19 of 1998 (hereinafter referred to as PIE) and in particular section 4 thereof. Counsel on behalf of the applicant was however of the view that the provisions of PIE were not applicable. **ISSUE RAISED** The issue which was therefore raised which had to be decided first as a point in limine was whether or not the applicant was obliged to comply with the provisions of section 4 of the PIE Act. **DISCUSSIONS AND SUBMISSIONS**⁷ Both parties relied heavily on the decision in the matter of *Ndlovu v Ngcobo, Bekker and Another v Fika* 2003 (1) SA 113 SCA. I was also referred to the case of *Shoprite Checkers (Pty) Ltd v Jardim* 2004 (1) SA 502. In terms of PIE a building or structure includes any hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter. On the other hand, evict or eviction in terms of PIE means to deprive a person against his or her will of occupation of a building or structure or the land on which such a building or structure is erected. Harms JA in *Ndlovu's* supra said the following: A further area of concern is the lease of commercial properties. Does it fall within the purview of Pie? Prima facie the answer would be in the affirmative because of definition of building or structure which includes any hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter. The word "includes" is a general term of extension. It may however depending upon the circumstances, be one of exhaustive definition and synonymous with "comprise". In this instance, having regard to the history of the enactment with, as already pointed out, its roots in sections 26(3) of the Constitution which is concerned with rights to one's home, the preamble to PIE which emphasises the right to one's home and the interest of vulnerable persons, the building listed and the fact that one is ultimately concerned with any other form of temporary or permanent dwelling or shelter, the ineluctable conclusion is that, subject to the *ejusdem* generic rule, the terms were used exhaustively. It follows that building or structures that do not perform the function of dwelling or shelter for humans do not fall under PIE and since juristic persons do not have dwellings, their unlawful possession is similarly not protected by PIE". Repeatedly in *Shoprite Checkers (Pty) Ltd* it was found that PIE was not applicable to ejectment from non-residential property.⁸ Now coming back to the circumstances of the present case, the property in question is a farm which has been leased to a trust represented by the respondents, the lease had expired, the applicant as the lessor wants to evict the respondents from the property together with all other persons on the property or farm, the respondents are resisting the eviction on the ground that the lease agreement has been extended, an issue which is disputed by the applicant, there is a house on

the property which was being used for dwelling by the first respondent, and on the papers before me no indication that there are or there are no farm workers residing on the farm and lastly in terms of the lease agreement said to have expired, workers and members of the family of the lessee brought onto the farm were to be affected by the terms and conditions of the agreement.⁹ On behalf of the applicant it was argued that because a trust is a juristic person it therefore cannot have a dwelling. Therefore its unlawful possession cannot similarly be protected by PIE. A dwelling is defined as a house, flat or apartment etc, where a person or persons live. A dwelling house on the other hand is described as a house that people live in, not one that is used as an office (see Oxford Dictionary 6th edition). Indeed as indicated in the two cases referred to earlier in this judgment, buildings or structures that do not perform the function of dwelling or shelter for humans (my own emphasis) do not fall under PIE. Mr Heyns on behalf of the applicant submitted that the house on the farm was occupied by the trust through the respondents. This might be so, the question rather should be whether these humans who occupied the property on behalf of the trust, so occupied the house on the farm as an office, for business purpose or as a dwelling or residence. According to Mr Heyns it is irrelevant whether or not the first respondent lives in this house alone or with members of his family for as long as the property is occupied on behalf of the trust, juristic person. I was not particularly impressed with this submission, because it really fails to take the circumstances of the case, and the intention of the legislature under PIE. Clearly the first respondent was not only occupying the property particularly the house on behalf of the trust,⁷ but he was also living in this property. This should fall squarely within the ambit of PIE.¹⁰ One should also consider the sensitivity within which the PIE Act was brought into being. Its roots is indeed to be found in section 26(3) of the Constitution which is concerned with rights to one's home, the preamble to PIE which emphasises the right to one's home and the interest of vulnerable persons. In my view the vulnerable persons would be those farm workers who might be on the property particularly that one is dealing with a property which is a farm in a most unsophisticated area. None of the parties said anything about the present or absence of farm workers on this property. I have been urged not to concern myself with this issue particularly that the first respondent on behalf of the trust himself did not highlight it. Effectively counsel on behalf of the applicant was suggesting that I cannot merely raise the issue. Historically farm workers were or are the most abused persons when it relates to eviction on a farm land. So much vulnerable that a number of legislations including the PIE Act were aimed at protecting these persons. It should certainly concern and worry me if no clear indication is given that such persons would not be affected. The provisions of section 4 of PIE are intended to ensure that no stone is left unturned in bringing notice of eviction to the attention of those who might be affected by the impending eviction. The applicant's main prayer for example includes all other persons to be evicted from the property. This cannot be done without the necessary notice. CONCLUSION¹¹. Consequently I conclude by finding that the applicant was obliged to comply with the provisions of section 4 of PIE. The application by the applicant is premature and is therefore struck off from the roll with costs. LEGODI M F JUDGE OF THE HIGH COURT Applicant's attorneys: JD Beyers & Day Ingelyf Brooklyn, Pretoria 012 346 7270 Counsel for the Applicant: G F Heyns Respondents' attorneys: Amanda De Wet Brooklyn, Pretoria 012 346 3460 Counsel for the Respondents: A P J

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BACKGROUND

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33.4 That any notice in terms of the lease agreement shall be in writing and shall be delivered by hand or by registered post and it shall be presumed that such notice was received within five days from the date on which it was sent by registered post. 3.5 That no agreement contrary to the terms and conditions of the existing written agreement shall be valid unless such an agreement or variation is reduced into writing and signed by the parties. 4. On the 9 August 2004 the applicant's attorneys wrote a letter to the respondents in terms whereof the respondents were warned that the lease agreement was expiring at the end of August 2004 and that the property must be vacated by the end of the lease agreement being the end of August 2004. To this letter the respondents' attorneys responded and alleged in the letter dated the 19 August 2004 that an oral agreement was concluded on the 21st June 2004 in terms whereof the applicant agreed to extend the lease agreement for another period of one year and that the respondents did not have to give a written notice as required by clause 4.3 read with clause 19.5 requiring the notice to be in writing and to be delivered not later than sixty days before the expiry of the lease agreement. 5. The alleged oral agreement is denied by the applicant and secondly the applicant is of the view that the said oral agreement is invalid for non compliance with the provisions of clause 4.3 requiring a notice of renewal within sixty days before the expiry of the existing lease agreement, clause 19.5 requiring a notice to be in writing and delivered by hand or registered post and clause 21.1 requiring any variation of the existing lease agreement to be in writing. 6. At the beginning of the hearing of this matter counsel on behalf of the respondents took the point that the applicant was under obligation to comply with the provisions of Prevention of Illegal Eviction from unlawful occupation of Land Act 19 of 1998 (hereinafter referred to as PIE) and in particular section 4 thereof. Counsel on behalf of the applicant was however of the view that the provisions of PIE were not applicable. **ISSUE RAISED** The issue which was therefore raised which had to be decided first as a point in limine was whether or not the applicant was obliged to comply with the provisions of section 4 of the PIE Act. **DISCUSSIONS AND SUBMISSIONS** 7. Both parties relied heavily on the decision in the matter of *Ndlovu v Ngcobo, Bekker and Another v Fika* 2003 (1) SA 113 SCA. I was also referred to the case of *Shoprite Checkers (Pty) Ltd v Jardim* 2004 (1) SA 502. In terms of PIE a building or structure includes any hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter. On the other hand, evict or eviction in terms of PIE means to deprive a person against his or her will of occupation of a building or structure or the land on which such a building or structure is erected. Harms JA in *Ndlovu's supra* said the following: A further area of concern is the lease of commercial properties. Does it fall within the purview of Pie? Prima facie the answer would be in the affirmative because of definition of building or structure which includes any hut, shack, tent or

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6.

ISSUE RAISED

DISCUSSIONS AND SUBMISSIONS

7.

Ndlovu v

Ngcobo, Bekker and Another V Fika

2003 (1) SA 113

Shoprite Checkers (Pty) Ltd

v Jardim

2004 (1) SA 502.

Ndlovu

A further area of concern is the lease of commercial properties. Does it fall within the purview of Pie? Prima facie the answer would be in the affirmative because of definition of building or structure which includes any hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter. The word "includes" is a general term of extension. It may however depending upon the circumstances, be one of exhaustive definition and synonymous with "comprise". In this instance, having regard to the history of the enactment with, as already pointed out, its roots in sections 26(3) of the Constitution which is concerned with rights to one's home, the preamble to PIE which emphasis the right to one's home and the interest of vulnerable persons, the building listed and the fact that one is ultimately concerned with any other form of temporary or permanent dwelling or shelter, the ineluctable conclusion is that, subject to the *eiusdem* generic rule, the terms were used exhaustively. It follows that building or structures that

do not perform the function of dwelling or shelter for humans do not fall under PIE and since juristic persons do not have dwellings, their unlawful possession is similarly not protected by PIE". Repeatedly in *Shoprite Checkers (Pty) Ltd v. Members of the Public* it was found that PIE was not applicable to ejectment from non-residential property.⁸ Now coming back to the circumstances of the present case, the property in question is a farm which has been leased to a trust represented by the respondents, the lease had expired, the applicant as the lessor wants to evict the respondents from the property together with all other persons on the property or farm, the respondents are resisting the eviction on the ground that the lease agreement has been extended, an issue which is disputed by the applicant, there is a house on the property which was being used for dwelling by the first respondent, and on the papers before me no indication that there are or there are no farm workers residing on the farm and lastly in terms of the lease agreement said to have expired, workers and members of the family of the lessee brought onto the farm were to be affected by the terms and conditions of the agreement.⁹ On behalf of the applicant it was argued that because a trust is a juristic person it therefore cannot have a dwelling. Therefore its unlawful possession cannot similarly be protected by PIE. A dwelling is defined as a house, flat or apartment etc, where a person or persons live. A dwelling house on the other hand is described as a house that people live in, not one that is used as an office (see Oxford Dictionary 6th edition). Indeed as indicated in the two cases referred to earlier in this judgment, buildings or structures that do not perform the function of dwelling or shelter for humans (my own emphasis) do not fall under PIE. Mr Heyns on behalf of the applicant submitted that the house on the farm was occupied by the trust through the respondents. This might be so, the question rather should be whether these humans who occupied the property on behalf of the trust, so occupied the house on the farm as an office, for business purpose or as a dwelling or residence. According to Mr Heyns it is irrelevant whether or not the first respondent lives in this house alone or with members of his family for as long as the property is occupied on behalf of the trust, juristic person. I was not particularly impressed with this submission, because it really fails to take the circumstances of the case, and the intention of the legislature under PIE. Clearly the first respondent was not only occupying the property particularly the house on behalf of the trust,⁷ but he was also living in this property. This should fall squarely within the ambit of PIE.¹⁰ One should also consider the sensitivity within which the PIE Act was brought into being. Its roots is indeed to be found in section 26(3) of the Constitution which is concerned with rights to one's home, the preamble to PIE which emphasises the right to one's home and the interest of vulnerable persons. In my view the vulnerable persons would be those farm workers who might be on the property particularly that one is dealing with a property which is a farm in a most unsophisticated area. None of the parties said anything about the presence or absence of farm workers on this property. I have been urged not to concern myself with this issue particularly that the first respondent on behalf of the trust himself did not highlight it. Effectively counsel on behalf of the applicant was suggesting that I cannot merely raise the issue. Historically farm workers were or are the most abused persons when it relates to eviction on a farm land. So much vulnerable that a number of legislations including the PIE Act were aimed at protecting these persons. It should certainly concern and worry me if no clear indication is given that such persons would not be affected. The provisions of section 4 of PIE are intended to ensure that no

stone is left unturned in bringing notice of eviction to the attention of those who might be affected by the impending eviction. The applicant's main prayer for example includes all other persons to be evicted from the property. This cannot be done without the necessary notice. CONCLUSION 11. Consequently I conclude by finding that the applicant was obliged to comply with the provisions of section 4 of PIE. The application by the applicant is premature and is therefore struck off from the roll with costs. LEGODI M F JUDGE OF THE HIGH COURT Applicant's attorneys: JD Beyers & Day Ingelyf Brooklyn, Pretoria 012 346 7270 Counsel for the Applicant: G F Heyns Respondents' attorneys: Amanda De Wet Brooklyn, Pretoria 012 346 3460 Counsel for the Respondents: A P J Els Heard on: 24/3/2005

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Shoprite Checkers

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CONCLUSION

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