SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

THE DISTRICT OF COLUMBIA, **Plaintiff,** **v.** **GEORGE FARRIS,** **Defendant.**	**Case No. 2017 CA 006242 B** **Judge Robert R. Rigsby**

OMNIBUS ORDER

Before this Court is (1) Defendant's Motion for Joinder, filed November 28, 2017, (2) Defendant's Motion to Proceed *In Forma Pauperis*, filed December 4, 2017, (3) Plaintiff's Motion for Judgment on the Pleadings, filed December 14, 2017, (4) Defendant's Motion for Leave to File First Amended Counterclaim, filed on April 12, 2018, and (5) Defendant's Consent Motion to Amend Scheduling Order, filed June 6, 2018. Upon consideration of the Motions, any oppositions, and the entire record herein, this Court **DENIES** Defendant's Motion for Joinder**, GRANTS** Defendant's Motion to Proceed *In Forma Pauperis*, **GRANTS** Plaintiff's Motion for Judgment on the Pleadings, **GRANTS IN PART AND DENIES IN PART** Defendant's Motion to Leave to File First Amended Counterclaim, and **GRANTS IN PART AND DENIES IN PART** Defendant's Consent Motion to Amend Scheduling Order for the reasons set forth below.

FACTS AND PROCEDURAL HISTORY

George P. Farris ("Defendant") and his wife, Virginia L. Farris, are the co-owners of the real property located at 732 6th Street NE, Washington, D.C. 20002 (the "Property"). Compl. ¶ 4; Proposed First Am. Counterclaim ¶ 5. Defendant, and his wife, purchased the property in 1980. Proposed First Am. Counterclaim ¶ 5. The Property is an end unit row house that abuts a public alley owned and operated by the District of Columbia Department of Transportation ("DDOT").

Answer ¶ 5; Proposed First Am. Counterclaim ¶ 11. Defendant contends that DDOT, over the years, has failed to properly maintain the alley which has led to severe deterioration. Proposed First Am. Counterclaim ¶ 14. Further, Defendant believes that the failure to maintain the alley has created a "grading and drainage issue[ ] that channel[s] precipitation into ruts and depressions, allowing precipitation to percolate down and pool against the Property's foundation wall exerting the forces of hydrostatic pressure." *Id.* In 2002, Defendant hired an engineer to design and install structural steel bracing along the frame of the foundation and ground to prevent collapse. Proposed First Am. Counterclaim ¶ 17. According to Defendant, on December 24, 2015, buildup of hydrostatic pressure caused by pooled drainage from the deteriorated alley caused an implosion of the property's north foundation wall. Proposed First Am. Counterclaim ¶ 18.

On February 25, 2016, the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA") discovered through a property inspection that the foundation on the alley side Defendant's property was in serious disrepair. DCRA issued a Notice of Violation informing Defendant that the Property was in violation of 14 D.C.M.R. § 704.1, which requires that "[f]oundations and structural members shall provide a safe, firm, and substantial base and support for the structure at all points." The Notice of Violation informed Defendant that he would have 30 days to abate the cited conditions and that "DCRA has the right to abate any conditions for which you have been cited pursuant to D.C. Official Code § 42-3131.01 and other law, and to assess the costs of correcting the condition as a tax on the premises." DCRA re-inspected the Property on April 12, 2016 and noted that the Property was still in violation of § 704.1. On December 9, 2016, DCRA obtained a search warrant to access and re-inspect the property to assess the structural stability of the Property and abutting alley. Defendant claims he

was never served such a warrant. On December 14, 2016, DCRA noted in an inspection report ("the DCRA Report") that there was a large hole "about 15 feet long, 8 feet deep and 4 feet wide" along the side of the Property. Plaintiff cites the DCRA Report, which attributes the damage to "years of soil erosion and due to lack of proper drainage and negative grade towards the house foundation wall." Defendant cites an "independent professional engineer's report ("Engineer's Report") that attributes the damage to "the severely deteriorated DC alley which allowed water to percolate through the broken surface of the alley and which accumulated or built-up against the Property." Due to the condition of Property, the property has been uninhabitable since November 2001, and the alley abutting remains closed until the violation of 14 D.C.M.R. § 704.1 are abated. Proposed First Am. Counterclaim ¶ 16. Plaintiff maintains that on August 29, 2017, it attempted to erect a fence around the property to undergo the abatement Defendant has denied DCRA access to the Property by chaining himself to the front door of the Property. Defendant acknowledges that he chained himself to the door of the Property, but disputes that Plaintiff ever requested access to the property while he was chained.

On September 11, 2017, Plaintiff filed a complaint against Defendant alleging that Defendant has denied Plaintiff access to the Property required to make necessary repairs. Plaintiff seeks an injunction requiring Defendant to permit DCRA to access the Property without interference with the repairs of the Property and alley. On November 28, 2017, Defendant filed an answer, counterclaim and motion for joinder, alleging that Plaintiff, and other related parties, negligently maintained the alley which has harmed Defendant's Property interest. Defendant seeks reimbursement for damage to the Property, diminution of property value, and reimbursement of rent due to the uninhabitably of the Property. On December 14, 2017, Plaintiff filed this motion for judgment on the pleadings. Plaintiff asks the Court to enjoin Defendant

from interfering with the abatement of the violation at the Property and dismiss Defendant's counterclaim.

STANDARD OF REVIEW

1. Jurisdiction

According to D.C. Code § 11-921(a), this Court has "jurisdiction of any civil action or other matter (at law or equity) brought in the District of Columbia." However, "it is axiomatic that equity has no jurisdiction over a controversy for which there is a complete and adequate remedy at law." *Marshall v. D.C.*, 458 A.2d 28, 29 (D.C. 1982). An "[a]dequate remedy at law means a remedy vested in the complainant, to which he may at all times resort at his own option, fully and freely, without let or hinderance." *Columbian Cat Franciers, Inc. v. Koehne*, 96 F.2d 529, 532 (D.D.C. 1938) (quoting *Beach v. Beach Hotel Corp.*, 168 A. 785, 788 (Conn. 1933)). To preclude an injunction, a remedy at law must be "equally prompt and certain and in other ways efficient [as the remedy in equity]." *Am. Life Ins. Co. v. Stewart*, 300 U.S. 203, 214 (1937).

2. Judgment on the Pleadings

A party may move for judgment on the pleadings after pleadings have finished but "within such time as not to delay the trial." Super. Ct. Civ. R. 12(c). Rule 12(c) expressly states, that under such circumstances, the motion for judgment on the pleadings "shall be treated as one for summary judgment and disposed of as provided in Rule 56." *Id.* The Court may grant a motion for judgment on the pleadings, only when "no issue of material fact exist[s] and the movant is entitled to judgment as a matter of law." *See Beegle v. Restaurant Management, Inc.*, 679 A.2d 480. 483 (D.C. 1996). The Court must view the facts in the light most favorable to the nonmoving party. *Dodek v. CF 16 Corp.*, 537 A.2d 1086, 1092 (D.C.1988). The moving party has the burden of establishing the absence of any genuine issues of material facts and the right to

judgment as a matter of law. *Ferguson v. District of Columbia*, 629 A.2d 15, 19 (D.C. 1993). Once the movant satisfies this burden, the burden shifts to the non-moving party to show the existence of a genuine issue of material fact. *See id.*; *Bruno v. Western Union Fin. Servs., Inc.*, 973 A.2d 713, 717 (D.C. 2009); *Paul v. Howard University*, 754 A.2d 297, 305 (D.C. 2000). Although the Court must view the record in the light most favorable to the non-moving party, conclusory allegations alone are insufficient to avoid summary judgment. *Graff v. Malawer,* 592 A.2d 1038, 1040 (D.C. 1991). Furthermore, "[T]he mere existence of a scintilla of evidence . . . will be insufficient; there must be evidence on which the jury could reasonably find for the [non-moving party]." *LaPrade v. Rosinsky*, 882 A.2d 192, 196 (D.C. 2005) (*quoting Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986); *see also* Super. Ct. Civ. R. 56 (e).

3. Leave to Amend to File a First Amended Counterclaim

A party may amend their pleading once any time before a responsive pleading is served. Super. Ct. Civ. R. 15(a). After a responsive pleading is filed, a party may still amend their pleading either with consent of the adverse party, or by leave of court, which "shall be freely given when justice so requires." *Id.* Leave to amend is a matter of discretion for the court, however, "the policy favoring resolution of cases on the merits creates 'a virtual presumption' that a court should grant leave to amend where no good reason appears to the contrary." *Bennett v. Fun & Fitness, Inc.,* 434 A.2d 476, 478 (D.C. 1981) (quoting *Randolph*, 398 A.2d at 350). Rule 15 is drafted to ensure that litigation should be decided upon the merits, not technical pleading rules. *See, International Tours & Travel, Inc. v. Khalil*, 491 A.2d 1149, 1152 (D.C. 1985). In considering whether to grant leave to amend, the court should consider: "(1) the number of requests to amend; (2) the length of time that the trial has been pending; (3) the presence of bad faith or dilatory reasons for the request; (4) the merit of the proffered amended

pleading; and (5) any prejudice to the non-moving party." *Johnson v. Fairfax Village Condominium IV Unit Owners Ass'n*, 641 A. 2d 495, 501 (D.C. 1994) (citing *Bennett*, 434 A.2d at 478-79). Broad discretion is granted to the trial court, especially when considered with the "prevailing spirit of liberalism" that guides trial judges when granting these motions. *Eagle Wine & Liquor Co. v. Silverberg Electric Co.*, 402 A.2d 31, 34 (D.C. 1979).

A counterclaim is compulsory "if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of 3rd parties of whom the court cannot acquire jurisdiction." Super. Ct. Civ. R. 13(a). A compulsory counterclaim must be stated in a responsive pleading, or it is waived. *See District of Columbia v. Morris*, 367 A.2d 571, 573 (D.C. 1976). Failure to raise a compulsory counterclaim bars the potential counterclaimant from litigating the claim in a later suit. *Id.* If a claimant fails to raise a counterclaim "through oversight, inadvertence, or excusable neglect, or when justice requires," the court may grant them leave to amend their complaint to include the counterclaim. Super. Ct. Civ. R. 13(f). Leave to file a counterclaim is presumed to be proper when it is clear the facts the claimant would use to establish their defense would be sufficient to establish the counterclaim. *See Randolph v. Franklin Inv. Co.*, 398 A.2d 340, 350 (D.C. 1979).

4. Joinder

According to Super. Ct. Civ. R. 20, a person may be joined in an action as a Defendant if "any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences." Super. Ct. R. 20(a)(2)(A). However, a motion for joinder should be dismissed for failure to comply with Super. Ct. Civ. R. 12-I(a). This rule states that "[b]efore filing any motion, except filed pursuant Rule 11, the moving party shall first ascertain whether other affected parties will

consent to the relief sought." Super. Ct. Civ. R. 12-I(a). Furthermore, according to Judge Rigsby's Supplement to General Order, this Court "strictly enforces the requirement in Rule 12-I(a)" and may deny the motion for a party's failure to comply.

ANALYSIS

1. This Court's Jurisdiction over this Matter

This Court directed the parties to submit supplemental briefs on this Court's jurisdiction over this matter on March 13, 2018. Plaintiff is seeking injunctive relief to bar Defendant from interfering with an abatement, pursuant to D.C. Code § 42-3131.01(a), of violation of 14 D.C.M.R. § 704.1. Plaintiff asserts that D.C. Code § 42-3131.02(a) does not provide an adequate and equal remedy as an injunction in order to prevent Defendant from further intrusions. D.C. Code § 42-3131.02(a) provides that:

> Any person who shall hinder, interfere with, or prevent any inspection of work authorized by this subchapter shall, upon conviction thereof, be punished by a fine not exceeding $100 or by imprisonment for a period not exceeding 3 months, or by both such fine and imprisonment, in the discretion of the court.

Plaintiff contends that imposing a monetary fine on Defendant or imprisoning Defendant would serve no deterrent effect as Plaintiff believes that Defendant's past conduct will continue in absence of an official order for injunctive relief. Plaintiff supports his argument by highlighting Defendant's past conduct of chaining himself to the property and refusing to allow the District to abate the damages. Generally, "where the acts complained of constitute a breach of the criminal law, courts of equity will not . . . take jurisdiction to enjoin the further continuance or prevention of threatened illegal acts." Whitaker v. Prince George's County, 514 A.2d 4, 9 (Md. 1986). However, if the enforcement of criminal law is merely incidental to the relief sought and the acts complained of constitute nuisance and a more complete remedy is

afforded by injunction than by criminal prosecution, a court in equity may grant the relief sought by injunction. *Id.*; *see also George Washington Unvi. v. Scott*, 711 A.2d 1257, 1260 n.5 (D.C. 1998) ("We ordinarily turn to the common law of Maryland for guidance when there is no District of Columbia precedent on an issue."), *citing Napoleon v. Heard*, 455 A.2d 901 (D.C. 1983).

This Court agrees with Plaintiff. D.C. Code § 42-3131.02(a) would not provide Plaintiff "complete" relief in this matter. This Court notes that Defendant's history of interfering with the District's ability to make the necessary repairs to the Property foreshadows the likelihood of such events to recurring in the future. In seeking criminal prosecution again Defendant by imposing a fine or seeking imprisonment, Plaintiff is only provided with a short timeframe to complete the abatement of the Property. In order for Plaintiff to fulfill its duties without further interruption, an injunction by this court is more adequate. Since it is determined that there is no adequate remedy at law for Plaintiff, it is established that this Court has jurisdiction over this matter. This Court will now rule on the following pending motions.

2. Plaintiff's Motion for Judgment on the Pleadings

Plaintiff first asserts that the District is entitled to injunctive relief as a matter of law and therefore judgment on the pleadings is appropriate. A "request for injunctive relief is a remedy and does not assert any separate cause of action," *Kemp v. Eiland*, 139 F.Supp.3d 329, 343 (D.D.C.2015) (internal quotation marks omitted). Generally, a permanent injunction requires (1) that there is no adequate remedy at law, (2) that the balance of equities favors the moving party, and (3) that the moving party has demonstrated success on the merits. *See Ifil v. Dist. Columbia*, 665 A.2d 185, 188 (D.C. 1995), *citing* 43A C.J.S. *Injunctions* § 16 (1978); *Universal Shipping Co. v. United States*, 652 F. Supp. 668, 675-76 (D.D.C. 1987) (holding that the "[c]ourt must

look at the interests of the parties who might be affected by the [injunction] and must also examine whether the facts and the relevant law indicate that an injunction clearly should be granted or denied apart from any countervailing interest"). However, "[i]njunctive relief may be inappropriate if the affected parties have not shown a propensity toward violating the statute and nothing in the record . . . suggests the likelihood or even the possibility of further violations." *POM Wonderful, LLC v. F.T.C.*, 777 F.3d 478, 499 (D.C. Cir. 2015), *citing Borg–Warner Corp. v. FTC,* 746 F.2d 108, 110-11 (2d Cir.1984) (internal quotations omitted).

The balance of equities favors Plaintiff. The injunction would promote the public interest by preventing Defendant from further hindering the District's efforts to abate a public nuisance. Both parties agree that: (1) the Property and alley are in disrepair, (2) the Property remains uninhabitable, (3) the alley should remain closed as a result, and (4) neighbors are unable to access their parking pads due to the disrepair of the Property and alley. It appears undisputed that the public interest would be served by repairs to the Property and alley. Additionally, the public interest would be served by ensuring the government can enforce its housing code regulations.

Plaintiff has demonstrated success on the merits. Defendant has been found to be in violation of 14 D.M.C.R § 704.1 and D.C. Official Code § 42-3131.01. Therefore, DCRA is authorized to abate such violations after following the proper procedures pled in Plaintiff's complaint and undisputed in Defendant's answer. The question of liability for the violation is independent to the question of whether DCRA is authorized by law to abate the violation. This Court agrees with Plaintiff and grants Plaintiff's Motion for Judgment on the Pleadings. Furthermore, Plaintiff's request for injunctive relief is granted.

3. Defendant's Motion for Leave to File a Counterclaim

In Defendant's Proposed First Amended Counterclaim, Defendant asserts four (4) counterclaims against Plaintiff: Negligence, Violation of 42 U.S.C. § 1983, Inverse Condemnation and Declaratory Judgment.

a. Defendant's Counterclaim for Negligence

Defendant contends that Plaintiff's negligence in maintaining the alley created or caused further damage to the Property. It is determined that Defendant's counterclaim is sufficient to avoid denial of entry to this matter. In order to present a viable counterclaim, Defendant cannot merely allege that the District was negligent in maintaining the alley. Defendant must further demonstrate that the District had notice of the dangerous condition of the alley. *See Tucci v. Dist. of Columbia*, 956 A.2d 684, 699 (D.C. 2008) ("Before the District may be liable for failure to maintain a roadway, it must have notice (actual or constructive) of an unsafe or dangerous condition."). It is found in the record that Defendant has pled that the District was afforded notice of the deteriorating condition of the alley, and therefore has not failed to state a claim "that is plausible on its face." *See Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 544 (D.C. 2011). Since Defendant is successful in stating a plausible claim for negligence in his counterclaim, Defendant's Motion for Leave to File a First Amended Counterclaim is granted in part with regards to the negligence counterclaim.

b. Defendant's Counterclaim for Violation of 42 U.S.C. § 1983, Inverse Condemnation and Declaratory Judgment

Defendant also contends that (1) Plaintiff has violated 42 U.S.C. § 1983, (2) Plaintiff has engaged in the Inverse Condemnation of the Property and (3) as a result, is seeking a Declaratory Judgment in order to determine the best way to proceed with the abate of the Property.

42 U.S.C. § 1983 establishes a cause of action for any person who has been deprived of any right secured under the Constitution or any law of the United States by someone acting under the color of the law. To successfully bring a claim under 42 U.S.C. § 1983, Plaintiff must prove that (1) the conduct was committed by someone "acting under the color of state law" and (2) that the result of the conduct deprived Plaintiff of the rights, privileges or immunities guaranteed under the Constitution or any other law of the United States. However, courts have held that there is no "logical causal relationship" between compliance with local building code requirements and any decline in the fair market value that a home may experience. *Cummins v. Robinson Twp.*, 283 Mich. App. 677, 709 (Mich. Ct. App. 2009). Furthermore, the reduction in value of regulated property is insufficient to establish that a compensable taking by the government has occurred. *Id.* Here, Plaintiff claims that the District of Columbia has committed a taking by attempting to enforce housing code regulations which Plaintiff believes will decrease the value of his Property. Since the enforcement of housing regulations does not constitute a government "taking", Defendant has failed to assert a plausible claim for relief under 42 U.S.C. § 1983. Likewise, "Inverse condemnation is a shorthand description of the manner in which a landowner recovers just compensation for a taking of his property when condemnation proceedings have not been instituted." *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 550 (D.C. 2011), *quoting Agins v. Tiburon*, 447 U.S. 255, 258 (1980). Since it has been established that the government enforcement of housing regulations does not constitute a taking, Defendant has also failed to present a plausible claim for inverse condemnation. Lastly, this Court need not address Defendant's declaratory judgement claim since this Court has granted Plaintiff's Motion for Judgment on the Pleadings.

Since Defendant is unsuccessful in stating a plausible claim for relief under 42 U.S.C. § 1983, Inverse Condemnation and Declaratory Judgment, in his proposed counterclaim, Defendant's Motion for Leave to File a First Amended Counterclaim is denied in part with regards to the violation of 42 U.S.C. § 1983, inverse condemnation and declaratory judgment counterclaims.

4. Defendant's Motion for Joinder

Defendant sets out to join Muriel Bowser, the Mayor of the District of Columbia, Brian Kenner, the Deputy Mayor of the District of Columbia, Rashad Young, the City Administrator of the District of Columbia, Jeff Marootian, the Director of the DDOT, and Melinda Bolling, the Director of the District Department of Consumer and Regulatory Affairs, to this suit. According to Super. Ct. Civ. R. 20, any person may be joined as a Defendant if there is a right to relief afforded, arising out of the same transaction or occurrence. However, parties to a suit must comply with Super. Ct. Civ. R. 12-I(a) which states that before any motion is filed, the moving party must first ascertain whether the other affected party will consent to said motion. Additionally, this Court strictly enforces Rule 12-I(a) per Judge Rigsby's Supplement to General Order.

In addition, joining the parties mentioned above in their official capacity is unnecessary in order for Defendant to receive the relief sought. "An official-capacity suit is, in all respects other than name, to be treated as a suit against the entity . . . [because] the real party in interest is the entity." *Kentucky v. Graham*, 473 U.S. 159, 166 (1985). Additionally, "bodies within the District of Columbia government are not suable as separate entities." *Hamilton v. District of Columbia*, 720 F. Supp. 2d 102, 108 (D.D.C. 2010), *quoting Hinton v. Metro Police Dep't*, 726 F. Supp. 875, 875 (D.C. 1989) (finding that the Metropolitan Police Department is not an entity

that can be individually sued). Rather, "[a] person aggrieved by the action or inaction of a *non sui juris* body with the District government must name the District as the defendant in order to sue for relief." *Kane v. District of Columbia*, 180 A.3d 1073, 1078 (D.C. 2018). Since the District of Columbia is already a named party in this suit, there is no need to join others in their official capacity to afford Defendant complete relief. Also, to remain consistent with judicial precedent, this Court is not persuaded to join separate bodies of the District as separate entities to this matter. Lastly, Defendant failed to attempt to obtain the consent of Plaintiff in filing this motion for joinder. Defendant's motion for joinder is hereby denied without prejudice.

5. Defendant's Motion to Proceed *In Forma Pauperis*

This Court grants Defendant's Motion to Proceed *In Forma Pauperis* due to Defendant's claim of receiving Interim Disability Assistance because his SSI application has not yet been approved or certified. The Court acknowledges Defendant's financial concern and grants said request.

6. Defendant's Consent Motion to Amend Scheduling Order

Plaintiff submitted a response to Defendant's consent motion on June 6, 2018, clarifying that, although it consented to most of Defendant's requested extensions, it did not consent to extending the discovery request deadline in the current scheduling order. Accordingly, the Court will grant Defendant's motion only as to the deadlines Plaintiff agreed to extend.

CONCLUSION

Viewing all evidence in the light most favorable to the non-moving party and drawing all reasonable inferences from the record in Defendant's favor, this Court **DENIES** Defendant's Motion for Joinder, **GRANTS** Defendant's Motion to Proceed *In Forma Pauperis*, **GRANTS** Plaintiff's Motion for Judgment on the Pleadings, **GRANTS IN PART AND DENIES IN**

PART Defendant's Motion to Leave to File First Amended Counterclaim, and **GRANTS IN PART AND DENIES IN PART** Defendant's Consent Motion to Amend Scheduling Order.

Accordingly, based on the entire record therein, it is this 24th day of July, 2018, hereby

ORDERED that Defendant's Motion for Joinder is **DENIED WITHOUT PREJUDICE**; and it is further

ORDERED that Defendant's Motion to proceed *In Forma Pauperis* is **GRANTED**; and it is further

ORDERED that Plaintiff's Motion for Judgment on the Pleadings is **GRANTED**; and it is further

ORDERED that Defendant shall permit the DCRA access to 732 6th Street, N.E., Washington, D.C. 20002; and it is further

ORDERED that Defendant shall not interfere with DCRA's abatement of the violation fo 14 D.C.M.R. § 704.1 at the townhouse located at 732 6th Street, N.E., Washington, D.C. 20002; and it is further

ORDERED that Defendant's Motion to Leave to File First Amended Counterclaims is **GRANTED IN PART AND DENIED IN PART**, as set forth above; and it is further

ORDERED that Defendant's Consent Motion to Amend Scheduling Order is **GRANTED IN PART AND DENIED IN PART**; and it is further

ORDERED that the Scheduling Order is amended as follows:

Event	**Original Deadline**	**Amended Deadline**
Close of Discovery	June 25, 2018	August 24, 2018
Filing Motions	July 23, 2018	September 21, 2018
Dispositive Motions Decided	August 22, 2018	October 22, 2018

ADR/Mediation	Sept. 6, 2018 – Oct. 9, 2018	**November 13, 2018 at 11:00 a.m.**

SO ORDERED.

Robert R. Rigsby

Robert R. Rigsby
Associate Judge
Superior Court of the District of Columbia

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