IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 5

Suit No 1025 of 1994

Between

Mayside Investments Pte Ltd

… *Plaintiff*

And

Peh Kwee Tee
Tham Ah Su (m w)

… *Defendant*

GROUNDS OF DECISION

Version No 1: 29 Oct 2026 (23:45 hrs)

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Mayside Investments Pte Ltd v Peh Kwee Tee and Another

[1998] SGHC 5

Suit No 1025 of 1994
S Rajendran J
06 January 1998

1 **Judgment:**

2 *Cur Adv Vult*

3 The plaintiffs are a company incorporated in Singapore in which the principal shareholder is one Mdm Neo Kah Bee. Mdm Neo is the wife of one Chung Kok Soo ("Chung"). Chung held no shares in the plaintiffs nor was he on the Board of Directors.

4 Chung was a director and controlling shareholder of a Hong Kong company called Kadeko Development Ltd ("Kadeko"). Kadeko was a firm of contractors. It was the main contractor in a golf resort under construction in Batam, Indonesia, which was being developed by a company known as PT Paradise Bay Golf Resort ("PBGR"). One Hayashi was the principal shareholder of PBGR. Chung himself had a fairly substantial interest in PBGR. The first defendant Peh Kwee Tee ("Peh") held no shares in PBGR but helped Hayashi financially in the project and in return expected a share of 50% of the profits that Hayashi made from the project.

5 The second defendant Tham Ah Su was the wife of Peh. The two of them had in October 1992 entered into an agreement with the developers of a property being developed in Singapore, called "The Waterside", to purchase an apartment that was under construction.

6 In early 1993, PBGR owed approximately $4m to Kadeko for work done at the golf resort. PBGR was unable to settle this debt and this resulted in difficulties for Kadeko as Kadeko was unable to pay its sub-contractors. Discussions were held between Hayashi, Peh and Chung and as a result an arrangement was arrived at which included Peh agreeing to buy 77 memberships in the golf resort, payment for which was to be made by the transfer of Peh's apartment at The Waterside to Kadeko's nominees. The arrangement was contained in a letter Peh wrote to Kadeko dated 22 February 1992 which stated:

7 "Kadeko Development Limited

8 Batam

9 As discussed with your Mr KS Chung, I agree:

10 1) To buy 60 individual memberships in P.T. PBGR for a total consideration of $1,200,000. I agree to sell Apartment - #20-01 Water Side (Block 11) to your Nominees for $1,200,000 as full settlement of the above purchase.

11 2) I further agree to grant you a put option to sell back to me the above apartment for cash at $1,200 within 6 months from date hereof.

12 3) To buy 17 individual memberships in P.T. PBGR at $20,000 totalling $340,000 for cash.

Version No 1: 29 Oct 2026 (23:45 hrs)

13 The above agreement is subject to an agreement to be entered between Kadeko Development Limited and P.T. PBGR as per attached letter to be signed between P.T. PBGR and Kadeko Development Limited regarding settlement of $4,000,000 (approximately).

14 Sgd: xxx

15 PEH KWEE TEE "

16 The attached letter was also dated 22 February 1993. It was from Kadeko to PBGR and it read:

17 "P.T. Paradise Bay Golf Resort

18 Attention: Mr K Hayashi

19 RE: CONTRACT FOR $12 MILLION

20 (GOLF COURSE + CLUB HOUSE)

21 Further to the discussion with Mr Hayashi, Mr Peh Kwee Tee & Mr KS Chung. It has been agreed that the $4,000,000/- being balance amount for work done and to be done be paid as follows:

22 1) P.T. PBGR will pay S$1,800,000-00 in cash in accordance with the attached schedule.

23 2) Upon request P.T. PBGR will issue 77 memberships worth $20,000 each totalling $1,540,000/- as part settlement of the said $4,000,000/- on condition that Mr Peh Kwee Tee buys over 77 Memberships for CASH

Version No 1: 29 Oct 2026 (23:45 hrs)

$1,540,000/-. It is further agreed that if Mr Peh Kwee Tee does not proceed with the said purchase, P.T. PBGR will make payment of the said $1,540,000/-.

24 3) ...

25 The amount of $4,000,000/- is subject to verification by both sides. Any upward or downward adjustment would be settled in cash. This letter supersedes our letter of 18.02.93.

26 Sgd: xxx

27 KADEKO DEVELOPMENT LIMITED

28 We agree to the above.

29 Sgd: xxx 14 JUN 1993

30 Kanhatsu Hayashi

31 for and on behalf of P.T.

32 Paradise Bay Golf Resort "

33 By a letter dated 31 March 1993 the plaintiffs and the defendants authorised M/s ST Lim & Co ("ST Lim"), a firm of solicitors in Singapore, to act in the transfer of the apartment at The Waterside. An option to purchase was prepared by ST Lim. It was addressed to Lotine Investment Ltd and/or Nominees and it gave the addressee the right to accept the offer by signing the acceptance copy and delivering it to ST Lim on or before 3 May 1993 together with a sum of $200,000. Lotine Investment Ltd was a Hong Kong incorporated

Version No 1: 29 Oct 2026 (23:45 hrs)

company belonging to Chung and his wife. The option was signed by the defendants and witnessed by ST Lim. It acknowledged that a sum of $350,000 had been received as consideration for the option. Peh also issued a receipt dated 31 March 1993 acknowledging receipt of the option fee of $350,000. Completion was to be within 8 weeks of the option exercise date. Under the option the vendor was required to procure for the benefit of the plaintiffs a fresh agreement for the Sale and Purchase of the property to be entered into between the developer and the purchaser. ST Lim proceeded to obtain this fresh agreement in favour of the plaintiffs.

34 The plaintiffs claim that they were the nominees of Lotine and that they exercised the option on 19 May 1993. Chung testified that the $350,000, the $200,000 and other monies payable to the defendants in respect of the apartment were, as agreed between the parties to be set off against the sums due to Kadeko for the purchase of the memberships in the golf resort. To reflect this Kadeko issued two receipts, one dated 31 March 1993 for $350,000 and the other dated 19 March 1993 for $200,000 in favour of Peh. On 8 May 1993, at the offices of ST Lim, the defendants signed a completion account wherein the defendants acknowledged receipt of the said amounts.

35 On 28 July 1993 ST Lim wrote to the plaintiffs to say that the defendants had instructed that completion would take place upon the defendants receiving the key to the property from the developer. On 7 October 1993 ST Lim, on behalf of the defendants, wrote to the plaintiffs requesting an extension of time until 6 January 1994 for completion. The plaintiffs agreed.

36 Further negotiations between Kadeko and PBGR took place on the settlement of outstanding accounts between them. As a result, in an agreement dated 18 November 1993 ("the November agreement") between Kadeko and

Version No 1: 29 Oct 2026 (23:45 hrs)

PBGR, a re-arrangement of the payment schedule was arrived at. Peh was not a signatory to this November agreement. Chung testified that this November agreement was arrived at only in late January 1994 but had been dated 15 November 1993 at the request of one PK Tan, a legal advisor of PBGR. Chung further testified that although Peh was not a signatory to the new agreement, its terms had been arrived at with the knowledge and participation of Peh. Peh denied this.

37 Peh, who testified on behalf of himself and his wife (the second defendant), did not dispute that he and his wife had signed the option. He claimed, however, that the option was in fact signed on or about 3 May 1993 but backdated to 31 March 1993. It was Peh's case that even after 19 April 1993, the date of the purported exercise of the option, Kadeko did not make any effort to transfer the 60 memberships to him. Peh also claimed that he knew nothing about the November agreement until March/April 1994 but pointed out that the November agreement nevertheless showed that PBGR and Kadeko no longer wished to transfer memberships to him as it was provided therein that "all agreements either written or oral pertaining to the main contract and related matters, especially the agreement between the parties hereto and dated 22 February 1993, be superseded by this Agreement."

38 On 21 December 1993 the defendants signed a letter addressed to the developers of The Waterside authorising Chung to inspect and collect the keys to the property. On 22 December 1993 the plaintiffs forwarded their cheque to ST Lim for $2,030 in payment of the maintenance charges for the property. On the strength of the letter of authorisation given by the defendants, the plaintiffs collected the keys to the premises and took possession thereof.

Version No 1: 29 Oct 2026 (23:45 hrs)

39 On 12 January 1994 the plaintiffs sent a cheque for $200,000 to ST Lim favouring Peh and his wife in part payment of the purchase price of the property. Peh paid this cheque into his bank account after obtaining a letter from his wife addressed to his bank indicating her consent. Peh denied that this payment was from the plaintiffs towards payment of the purchase price. He claimed that the $200,000 was in fact cash provided by him to Chung which was being circulated back.

40 Chung testified that in March 1994 Peh contacted him several times asking that the property be re-sold to him. He refused and wrote to ST Lim asking that the sale and purchase be completed immediately. On 16 April 1994 M/s Allen & Gledhill ("A&G") wrote to ST Lim to say that they had been instructed to act for Peh and gave notice that they considered the caveat lodged against the property by the plaintiffs to be wrongful and required the caveat to be removed and the keys to the property handed back to the defendants within 14 days. On 18 April 1994 A&G wrote again to inform ST Lim that their clients no longer intended to go ahead with the completion of the transfer of the property to the plaintiffs.

41 On 18 April 1994 M/s Bih Li & Lee ("BLL") wrote to A&G to say that they were now acting for the plaintiffs. BLL took issue with A&G's letter of 16 April 1994 and informed A&G that the plaintiffs were ready and willing to complete and asked A&G to give at least 7 days notice if they intended to complete.

42 On 22 April 1994 BLL faxed a notice to A&G to complete the sale. For the purposes of the completion the plaintiffs obtained a cashier's order for the sum of $247,464 being the amount payable to the defendants under a completion account prepared by ST Lim on 13 January 1994. The same day A&G replied

Version No 1: 29 Oct 2026 (23:45 hrs)

to BLL's letter of 18 April 1994. In this letter A&G spelt out why they considered the caveat lodged by the plaintiffs to be wrongful. It will be useful to set out the full text of this letter.

43 "M/s Bih Li & Lee

44 79 Robinson Road

45 #24-01 CPF Building

46 Singapore 0106

47 Dear Sirs

48 BLK 1 (PLOT 8) #21-04 THE WATERSIDE, SINGAPORE.

49 1. We refer to your letter dated 18 April 1994. We confirm that we also act for Mdm Tham Ah Su.

50 2. We will set out our reasons for us saying the lodgement for the caveat was wrongful. To do so, it is necessary to briefly set out the history of the events that led to the granting of the option by our clients to yours.

51 3. We are instructed that sometime in 1992/1993, there was a dispute between PT Paradise Bay Golf Resort ("PTPBGR") with KADEKO Development Ltd ("KADEKO"). PTPBGR is a company incorporated in the Republic of Indonesia, while KADEKO is a company incorporated in Hong Kong.

Version No 1: 29 Oct 2026 (23:45 hrs)

52 4. We are instructed that one of the principal shareholders/officers of PTPBGR were one Mr Hayashi and that of KADEKO was one Mr KS Chung. Our client, Mr Peh Kwee Tee ("Mr Peh") is a mutual friend of both parties.

53 5. On or about 22 February 1993, an agreement between our client, KADEKO and PTPBGR was entered into. The agreement was, inter alia, that:-

54 (1)(a) Upon request, PTPBGR would issue to KADEKO 77 memberships (worth $20,000.00 each, totalling $1,540,000.00) as part settlement of a claim of approximately $4,000,000.00, owing from PTPBGR to KADEKO, on condition that Mr Peh Kwee Tee will purchase the 77 Memberships;

55 (b) Mr Peh would transfer the apartment (namely, Blk 11, #20-01, The Waterside) to KADEKO’s and/or Mr KS Chung’s nominees (for $1,200,000.00) in return for 60 individual memberships (in PTPBGR) from KADEKO for a total consideration of $1,200,000.00. Mr Peh will buy over the rest of the 17 individual memberships in PTPBGR from KADEKO at $20,000.00 totalling $340,000.00 for cash. If Mr Peh Kwee Tee does not proceed with the said purchase of the 77 memberships, PTPBGR will make payment of the said $1,540,000.00 to KADEKO; and

56 (2) If a sum of $1,200,000.00 is paid to KADEKO directly by PTPBGR or indirectly by PTPBGR through Mr Peh within 6 months of 22 February 1993, Mr Peh may exercise the option for the property to be transferred back to him.

57 6. Subsequently, it was agreed between Mr KS Chung (on behalf of KADEKO) and Mr Peh that the subject matter of the transfer be changed to the above property instead of Blk 11, #20-01, The Waterside. It was pursuant to the

agreement at paragraph 5 above that our clients granted the option dated 31 March 1993 to one LOTINE Investment Ltd, Hong Kong.

58 7. We are instructed that your clients, namely Mayside Investments Pte Ltd ("Mayside") was incorporated for the purpose of accepting the option. Our instructions are that Mayside is controlled by Mr KS Chung. At all material times, no option monies and/or other purchase monies were paid by your clients to ours. The payment of $200,000.00 that was purportedly made by your clients was in fact monies which originated from Mr Peh.

59 8. As you will note, the consideration to our clients for the transfer of the said property was however never paid. The consideration therefore wholly failed.

60 9. We are further instructed that a fresh agreement (dated sometime in November 1993), was entered into between KADEKO and PTPBGR. It was a term of this fresh settlement agreement that the terms under the previous agreement (dated 22 February 1993) were superseded. Consequent upon this fresh agreement, no shares would be transferred from PTPBGR to KADEKO. A fortiori, no shares were also transferred from KADEKO to Mr Peh. Further, we are instructed that KADEKO had made a claim against PTPBGR for the sum of $1,200,000.00.

61 10. To reiterate:

62 (1) the transfer of the above property to your clients was condition (inter alia) upon the transfer of memberships by KADEKO to Mr Peh. That condition has been breached. Further, the entire transaction was indivisible and concerns all these parties; and

Version No 1: 29 Oct 2026 (23:45 hrs)

63 (2) No consideration (in money terms) was ever paid by your clients to ours.

64 11. We trust that the above satisfies your queries. Accordingly, our clients are not obliged to complete the Purchase. Our clients reserve all their rights in this matter. In view of your clients' unsatisfactory response, our clients shall take all such steps as they deem fit.

65 Yours faithfully

66 Sgd: xxx "

67 On 1 June 1994 BLL, acting for Kadeko, sent a fax to A&G to say that the memberships in the golf resort were not given to Peh as it was Peh who did not want the memberships any more. The letter went on to say that if Peh now wanted the memberships Kadeko would take the appropriate steps in the matter. The defendants' response to this fax was curt. By fax dated 10 June 1994 A&G replied:

68 "It suffices to say that we disagree with the contents of your letter. As regards your clients' offer of the memberships at a price of $20,000.00 each, our client no longer wishes to accept your clients' offer of the purchase of the memberships."

69 On 22 June 1994 the plaintiffs instituted these proceedings against the two defendants for specific performance and other ancillary relief. At the trial Chung testified on behalf of the plaintiffs and Peh testified on behalf of the defendants. ST Lim, the solicitors who acted for both parties, was not called as a witness by either party. In cross-examination Mr Shanmugam, Counsel for the

Version No 1: 29 Oct 2026 (23:45 hrs)

defendants, asked Chung whether the plaintiffs were prepared to waive privilege in order to allow ST Lim to give evidence on behalf of the defendants. At that stage Mr Woo, who appeared for the plaintiffs, told the court that the plaintiffs would waive privilege completely if the defendants on their part would do likewise. Mr Shanmugam informed the court that his clients were not prepared to waive privilege. ST Lim, who would have been able to give material evidence in the defendants' claims, was therefore not called as a witness.

70 After the plaintiffs had opened their case and half-way through the cross-examination of Chung, the defendants applied to amend the Defence and Counterclaim. The defence raised under the Amended Defence and Counterclaim can be summarised as follows:

71 (a) Notwithstanding the terms of the option, it was understood that the option granted no right to the plaintiffs to purchase the property. The option was given only to comfort Chung and/or Kadeko's sub-contractors. The decision whether to proceed with the purchase of the memberships and if so whether to use the property in payment of 60 of those memberships was a matter on which the first defendant (Peh) had the right to decide. It was also the first defendant's belief that if a sum of $1.2m was paid to Kadeko directly by PBGR or indirectly by PBGR through the first defendant, within 6 months of 22 February 1993, the first defendant could exercise an option for the property to be transferred back to him;

72 (b) No consideration was paid by the plaintiffs on or before 3 May 1993 or at all to the defendants; and

73 (c) The completion of the purchase was conditional upon the transfer of memberships by Kadeko to the first defendant. As this condition was breached

Version No 1: 29 Oct 2026 (23:45 hrs)

the defendants are under no obligation to complete the transfer of the property. The pleadings did not specify who breached the condition.

74 The question whether the option was in fact not an option to purchase the property granted to the plaintiffs but was merely some kind of security arrangement that was not intended to give any right of purchase gave rise to the question whether the defendants, having granted the option, could be permitted to adduce evidence of terms contrary to the terms contained in the option. As this was a matter of crucial importance to the defence I permitted Peh to give evidence of what was said to be the true nature of the option and reserved my ruling on the question of admissibility.

75 Mr Woo, of course, submitted that evidence that contradicted the terms of the option would not be admissible under ss 93 and 94 of the Evidence Act. It would be helpful to set out s 94:

76 "Section 94

77 When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to section 93, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives in interest for the purpose of contradicting, varying, adding to, or subtracting from its terms:

78 Provided that -

79 (a) any fact may be proved which would invalidate any document or which would entitle any person to any decree or other relating thereto; such as

Version No 1: 29 Oct 2026 (23:45 hrs)

fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, the fact that it is wrongly dated, want or failure of consideration, or mistake in fact or law;

80 (b) the existence of any separate oral agreement, as to any matter on which a document is silent and which is not inconsistent with its terms, may be proved; in considering whether or not this proviso applies, the court shall have regard to the degree of formality of the document;

81 (c) the existence of any separate oral agreement constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved; "

82 Mr Woo drew the court's attention to the cases of *UMBC v Tan Lian Keng & Ors* [1990] 1 MLJ 280 and *Exklusiv Services Pte Ltd Auto v Chan Yong Chua Eric* [1996] 1 SLR 433 and submitted that as the evidence sought to be adduced did not satisfy the requirements of s 94 of the Evidence Act, the evidence would not be admissible.

83 The only issue raised under proviso (a) to s 94 was the question of consideration. The other issues in proviso (a) such as fraud, intimidation, etc, were not raised. Proviso (b) was not raised. The document in question was an option to purchase in fairly standard form. It was not claimed that the option was silent on any matter connected with such a document. Proviso (c) could possibly apply in this case as the defendants were alleging that their obligation under the option to purchase was conditional upon Peh's decision whether to purchase the memberships in the resort. It was also the defendants' case that a condition precedent to the transfer of the property, namely, the transfer of the memberships to Peh, had not been effected.

Version No 1: 29 Oct 2026 (23:45 hrs)

84 **The lack of consideration**.

85 I will first deal with the submissions on the lack of consideration. Three sums of money were allegedly paid to the defendants towards the purchase price. These were:

86 (a) the option fee of $350,000;

87 (b) the deposit of $200,000 on the exercise of the option; and

88 (c) a sum of $200,000 as part payment to account of purchase price.

89 It was not in dispute that payments (a) and (b) were not cash payments but were set offs that the parties had agreed on in respect of the transfer of the memberships. The authenticity of the receipts issued in respect of these sums of money was not disputed. As for payment (c), whether or not the $200,000 had in fact been loaned by Peh in cash to the plaintiffs for the plaintiffs to make the payment to the defendants, the fact remains that such a payment was made. All three payments are in fact acknowledged as such by the defendants in the Completion Statement prepared by ST Lim. The defendants in signing the Completion Statement and in accepting the authenticity of the receipts issued have clearly accepted the credit given by Kadeko as being in discharge of payments (a) and (b). That being so, I see no merit in the submission that there was in this case no consideration for the option granted.

90 **The condition precedent**.

91 It was pleaded that the purchase of the property was conditional upon the transfer of the memberships to Peh by Kadeko. It was also pleaded that it was entirely up to Peh to decide whether he would purchase the memberships

Version No 1: 29 Oct 2026 (23:45 hrs)

and use the property for payment. The pleadings did not elaborate how it came about the memberships were not transferred to Peh but from the evidence before me, I am satisfied that the reason why the memberships were not transferred to Peh was because Peh no longer wanted the memberships.

92 It was said by Mr Shanmugam, in support of his submission that the option was merely some sort of security arrangement in relation to the financing of the golf resort, that the years 1992 and 1993 were years in which the property market was rapidly rising and Peh would not have agreed to sell the apartment for $1.2m. Apart from Mr Shanmugam's submission from the Bar, no expert evidence was led to suggest that $1.2m was not a fair value for the apartment. The more likely scenario appears to me to be that Peh, having granted the option to purchase at $1.2m, realised thereafter that the market was a rising market and therefore decided to try and abort the option.

93 In my view, the agreement reached between Peh, Chung and Hayashi gave Peh a discretion to take the memberships if he so desired and, again if he so desired, to pay for the memberships by transferring the apartment to Kadeko or its nominees. At the time he signed the option Peh had, quite clearly, decided to take the memberships and decided to pay for the memberships by the transfer of the property. Having so decided and having granted the option Peh, in my view, could not seek to invalidate the option by changing his mind about taking up the memberships. I reject the submission that the grant of the option was conditional upon a continuing right for the defendants to revoke the option should Peh change his mind about taking up the memberships. If Peh had wanted such a right he should have reserved such right in the option. Not having done so it was not open to Peh to adduce evidence of such a right as this would contradict the terms of the option.

Version No 1: 29 Oct 2026 (23:45 hrs)

94 In view of the above ruling, it is not necessary for me to go further into the details of the arrangements relating to the settlement of the amounts that were owed to Kadeko by PBGR and on the claim that the option was some sort of security arrangement. I will, however, say that I found Peh's evidence most unsatisfactory and the various changes in Peh's position to which Mr Woo made lengthy reference in his closing submission did not create a favourable impression about the bona fides of the defences raised. I also rejected Peh's attempt to paint himself as a pawn in the hands of Chung. I am satisfied on the evidence that Peh was a shrewd and experienced businessman and had arranged for the option in favour of Lotine Investment Ltd and/or its nominees with the intention of selling the apartment to finance the purchase of the memberships. The option was a valid option and Peh cannot now resile from it on account of the fact that he changed his mind about taking up the memberships.

95 The plaintiffs seek specific performance of the option to purchase. I am satisfied that this is a case where the relief of specific performance should be granted. Mr Woo suggested that if specific performance is granted the sum of $550,000 (comprising the two sums of $350,000 and $200,000) remain in the completion account but, in order to take into account the special features in this case, suggested that the completion be subject to two conditions, namely:

96 (a) a cashier's order of $550,000 in favour of Peh to pay off the credit that Peh has with Kadeko be tendered with the rest of the payments from the plaintiffs to the defendants; and

97 (b) the defendants be required, under Condition 8 of the Law Society's Conditions of Sale, to pay liquidated damages at the rate of 10% per annum on the purchase price of $1.2m from the date fixed for completion (20 April 1994) to the date of actual completion.

Version No 1: 29 Oct 2026 (23:45 hrs)

98 The suggestion that the $550,000 credit that Peh has with Kadeko be paid off by the plaintiffs at completion is a fair suggestion and I so order. As for the interest on the purchase price, Mr Woo told the court that he was asking for interest on the entire purchase price because the defendants had refused to give their consent to the apartment being sold and/or rented out pending the outcome of this litigation. Whilst that may be so, the fact remains that the plaintiffs have for some time enjoyed possession of the apartment. Taking that into consideration, I order that the defendants pay liquidated damages of 10% per annum on the purchase price under Condition 8(b) of the Law Society's Conditions of Sale but that the damages be abated by a sum equivalent to the annual value of the property fixed under the Property Tax Act for the period 20 April 1994 to the date of completion. I also order that completion be effected within 8 weeks of the date of this judgment and that the defendants bear the costs of this action.

99 **S Rajendran**

100 Judge

101 **6 January 1998**

102 SINGAPORE

S Rajendran J

Version No 1: 29 Oct 2026 (23:45 hrs)

Woo Bih Li and Chan Hock Keng (Bih Li & Lee) for the plaintiffs
K Shanmugam and Andrew Ho (Allen & Gledhill) for the defendants

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Version No 1: 29 Oct 2026 (23:45 hrs)