

**PACIFIC BANKING CORPORATION AND CHESTER G. BABST,
PETITIONERS, VS. THE COURT OF APPEALS, JOSEPH C. HART AND
ELEANOR HART, RESPONDENTS.**

G.R. No. L-45656. May 05, 1989

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review of the decision of the Court of Appeals in CA - G.R. Nos. 52573 and 52574 directing petitioners to pay to respondent Hart ONE HUNDRED THOUSAND (P100,000.00) PESOS with legal interest from February 19, 1958 until fully paid, plus FIFTEEN THOUSAND (P15,000.00) PESOS attorneys fees, but subject to the right of reimbursement of petitioner Pacific Banking Corporation (PBC) from petitioner Babst, whatever amounts PBC should pay on account of the judgment.

Briefly, the facts of the case are as follows:

On April 15, 1955, herein private respondents Joseph and Eleanor Hart discovered an area consisting of 480 hectares of tidewater land in Tambac, Gulf of Lingayen which had great potential for the cultivation of fish and saltmaking. They organized Insular Farms Inc., applied for and, after eleven months, obtained a lease from the Department of Agriculture for a period of 25 years, renewable for another 25 years.

Subsequently Joseph Hart approached businessman John Clarkin, then President of Pepsi-Cola Bottling Co. in Manila, for financial assistance.

On July 15, 1956, Joseph Hart and Clarkin signed a Memorandum of Agreement pursuant to which: a) of 1,000 shares outstanding, Clarkin was issued 500 shares in his and his wife's name, one share to J. Lapid, Clarkin's secretary, and nine shares in the name of the Harts were indorsed in blank and held by Clarkin so that he had 510 shares as against the Harts' 490; b) Hart was appointed President and General Manager as a result of which he resigned as Acting Manager of the First National City Bank at the Port Area, giving up a salary of P1,125.00 a month and related fringe benefits.

Due to financial difficulties, Insular Farms Inc. borrowed P250,000.00 from Pacific Banking Corporation sometime in July of 1956.

On July 31, 1956, Insular Farms Inc. executed a Promissory Note of P250,000.00 to the bank payable in five equal annual installments, the first installment payable on or before July 1957. Said note provided that upon default in the payment of any installment when due, all other installments shall become due and payable.

This loan was effected and the money released without any security except for the Continuing Guaranty, executed on July 18, 1956, of John Clarkin, who owned seven and a half percent of the capital stock of the bank, and his wife Helen.

Unfortunately, the business floundered and while attempts were made to take in other partners, these proved

unsuccessful. Nevertheless, petitioner Pacific Banking Corporation and its then Executive Vice President, petitioner Chester Babst, did not demand payment for the initial July 1957 installment nor of the entire obligation, but instead opted for more collateral in addition to the guaranty of Clarkin.

As the business further deteriorated and the situation became desperate, Hart agreed to Clarkin's proposal that all Insular Farms shares of stocks be pledged to petitioner bank in lieu of additional collateral and to insure an extension of the period to pay the July 1957 installment. Said pledge was executed on February 19, 1958.

Less than a month later, on March 3, 1958, Pacific Farms Inc. was organized to engage in the same business as Insular Farms Inc. The next day, or on March 4, 1958, Pacific Banking Corporation, through petitioner Chester Babst wrote Insular Farms Inc. giving the latter 48 hours to pay its entire obligation.

On March 7, 1958, Hart received notice that the pledged shares of stocks of Insular Farms Inc. would be sold at public auction on March 10, 1958 at 8:00 A.M. to satisfy Insular Farms' obligation.

On March 8, 1958, the private respondents commenced the case below by filing a complaint for reconveyance and damages with prayer for writ of preliminary injunction before the Court of First Instance of Manila docketed as Civil Case No. 35524. On the same date the court granted the prayer for a writ of preliminary injunction.

However, on March 19, 1958, the trial court, acting on the urgent petitions for dissolution of preliminary injunction filed by petitioners PBC and Babst on March 11 and March 14, 1958, respectively, lifted the writ of preliminary injunction.

The next day, or on March 20, 1958 respondents Hart received a notice from PBC signed by Babst that the shares of stocks of Insular Farms will be sold at public auction on March 21, 1958 at 8:00 A.M.

In the morning of March 21, 1958, PBC through its lawyer-notary public sold the 1,000 shares of stocks of Insular Farms to Pacific Farms for P285,126.99. The latter then sold its shares of stocks to its own stockholders, who constituted themselves as stockholders of Insular Farms and then resold back to Pacific Farms Inc. all of Insular Farms assets except for a certificate of public convenience to operate an ice plant.

On September 28, 1959 Joseph Hart filed another case for recovery of sum of money comprising his investments and earnings against Insular Farms, Inc. before the Court of First Instance of Manila, docketed as Civil Case No. 41557.

The two cases below having been heard jointly, the court of origin through then Judge Serafin R. Cuevas rendered a decision on August 3, 1972, the pertinent portions of which are as follows:

xxx xxx xxx

"It is plaintiffs' contention that the sale by Pacific Banking Corporation of the shares of stock of plaintiffs to the Pacific Farms on March 21, 1958 is void on the ground that when said shares were pledged to the bank it was done to cause an indefinite extension of time to pay their obligation under the promissory note marked Exh. E. Plaintiffs observed that under said promissory note marked Exh. E, no demand was made whatsoever by the bank for its payment. The bank merely asked for more collateral in addition to Clarkin's continuing guarantee. In other words, it is the view of the plaintiffs that the pledge of said shares of stock supersedes the terms and conditions of the promissory note marked Exh. E and that the same was only to insure an indefinite extension on the part of the plaintiffs to pay their obligation under said promissory note.

Plaintiffs accuse defendants of conspiracy or a unity of purpose in divesting said plaintiffs of their shares of stock and relieving Clarkin of his guarantee and obligation to Hart as well as to enable the bank to recover its loan with a big profit and Pacific Farms, of which Papa was President, to take over Insular Farms.

Plaintiffs contend that the purchase by Pacific Farms of the shares of stock of Insular Farms is void, the former having been organized like the latter for the purpose of engaging in agriculture (Section 190-1/7 of the Corporation Law); and that the transfer of all the substantial assets of Insular Farms to Pacific Farms for the nominal cost of P10,000.00 is in violation of the Bulk Sales Law, plaintiffs and other creditors of Insular Farms not having been notified of said sale and that said sale was not registered in accordance with said law (Bulk Sales Law) which in effect is in fraud of creditors.

As a result of defendant's acts, plaintiffs contend that they lost their 490 shares, the return of their 10 shares from Clarkin and their exclusive and irrevocable right to preference in the purchase of Clarkin's 50% in Insular Farms not to mention the mental anguish, pain, suffering and embarrassment on their part for which they are entitled to at least P100,000.00 moral damages. They also claim that they have been deprived of their expected profits to be realized from the operations and development of Insular Farms; the sum of P112,500.00 representing salary and pecuniary benefits of Joseph C. Hart from the First National City Bank of New York when he was required to resign by Clarkin, and finally, Joseph C. Hart and his wife being the beneficial owners of 499 shares in Insular Farms that were pledged to the Pacific Banking Corporation which was sold for P142,176.37 to satisfy the obligation of Insular Farms, the latter became indebted to plaintiffs for said amount with interest from March 21, 1958, the date of the auction sale.

On the other hand, defendant Pacific Banking Corporation contends that it merely exercised its legal right under the law when it caused the foreclosure of the pledged (sic) executed by plaintiffs, together with defendant John P. Clarkin to secure a loan of P250,000.00, said loan having become overdue. True the payment of a note may be extended by an oral agreement, but that agreement to extend the time of payment in order to be valid must be for a definite time (Philippine Engineering Co. vs. Green, 48 Phil. 466, 468). Such being the case, it is the opinion of the Court that plaintiffs contention that there was an indefinite extension of time with respect to the payment of the loan in question appears to be untenable. It cannot be admitted that the terms and conditions of the pledged (sic) superseded the terms and conditions of the promissory note.

With respect to the charge of conspiracy or unity of purpose on the part of all defendants to divest plaintiffs of the latter's shares of stock, relieving Clarkin of his guaranty and obligation to Hart, to enable the bank to recover its loan and to enable Pacific Farms to take over Insular Farms, suffice it to state that the charge of conspiracy has not been sufficiently established.

Considering plaintiffs' contention that the purchase by Pacific Farms of the shares of stock of Insular Farms and the transfer of all of the substantial assets of Insular Farms to Pacific Farms are in violation of the provisions of the Bulk Sales Law, the Court cannot see its way in crediting plaintiffs' contention considering the prevailing jurisprudence on the matter (People vs. Wong Szu Tung, 50 OG, pp. 48-57, 58-69, March 26, 1954)

With respect, however, to the claim of plaintiff Joseph C. Hart for payment of salary as Director and General Manager of Insular Farms for a period of almost one year at the rate of P2,000.00 a month, the Court believes that said plaintiff is entitled to said amount. On the basis of equity and there appearing sufficient proof that said plaintiff has served the corporation not only as Director but as General Manager, the Court believes that he should be paid by the Insular Farms, Inc. the sum of P25,333.30, representing his salaries for the period March 1, 1957 to March 20, 1958.

Again, with respect to the advances in the form of loans to the corporation made by plaintiff Joseph C. Hart, the Court is of the opinion that he should be reimbursed and paid therefor, together with interest thereon from March 21, 1958, or the sum of P86,366.91. This is so because said loans were ratified by the Board of Directors of Insular Farms, Inc. in a special meeting held on July 22, 1957. There is no showing that the aforesaid special

meeting was irregularly or improperly held.

The Court having maintained that the auction sale conducted by the bank's Notary Public which resulted in the purchase by Pacific Farms of the 1,000 shares of stock of Insular Farms, 490 of which were owned by plaintiffs, to be valid, the Court cannot approve the claim of plaintiffs for the reconveyance to them of said 490 shares of stock of Insular Farms. If there is anybody to answer for the pledging of said shares of stock to the bank, there is no one except the defendant John Clarkin who induced plaintiff to do so. Again, it is noteworthy to note that Clarkin owned and controlled 501 shares of said outstanding shares of stock and have not made any claim for the reconveyance of the same.

In view of the foregoing, judgment is hereby rendered in favor of plaintiffs and against defendant Insular Farms, Inc., sentencing the latter to pay the former the sum of P25,333.30, representing unpaid salaries to plaintiff Joseph C. Hart; the further sum of P86,366.91, representing loans made by plaintiffs to Insular Farms, Inc. and attorney's fees equivalent to 10% of the amount due plaintiffs.

With respect to the other claims of plaintiffs, the same are hereby denied in the same manner that all counter-claims filed against said plaintiffs are dismissed. Likewise, Francisco T. Papa's cross-claim against defendant Pacific Farms, Inc. is, as it is hereby, ordered dismissed for insufficiency of evidence." (pp. 462-467 of the Record on Appeal [p. 83, Rollo])

Dissatisfied with the foregoing decision, private respondents appealed the two consolidated cases to the Court of Appeals contending that:

"I

THE LOWER COURT ERRED IN HOLDING THAT PLAINTIFFS' CONTENTION TO THE EFFECT THAT THERE WAS AN INDEFINITE EXTENSION OF TIME WITH RESPECT TO THE PAYMENT OF THE LOAN IN QUESTION "APPEARS TO BE UNTENABLE."

II

THE LOWER COURT ERRED IN HOLDING THAT THE SALE BY THE PACIFIC BANKING CORPORATION OF THE SHARES OF STOCKS OF PLAINTIFFS WITH THE PACIFIC FARMS, INC. ON MARCH 21, 1958 IS VALID.

III

THE LOWER COURT ERRED IN HOLDING THAT PLAINTIFFS' CHARGE OF CONSPIRACY AGAINST THE DEFENDANTS HAS NOT BEEN "SUFFICIENTLY ESTABLISHED."

IV

THE LOWER COURT ERRED IN NOT HOLDING DEFENDANTS LIABLE FOR DAMAGES CAUSED TO THE PLAINTIFFS BY THEIR INDIVIDUAL AND COLLECTIVE ACTS WHICH ARE CONTRARY TO THE PROVISIONS OF THE CIVIL CODE ON HUMAN RELATIONS.

V

THE LOWER COURT WAS CORRECT IN HOLDING THAT "IF THERE IS ANYBODY TO ANSWER FOR THE PLEDGE OF SAID SHARES OF STOCK TO THE BANK, THERE IS NO ONE EXCEPT DEFENDANT JOHN P. CLARKIN WHO INDUCED PLAINTIFFS TO DO SO", BUT ERRED IN NOT FINDING

DEFENDANT JOHN P. CLARKIN LIABLE AS PRAYED FOR IN PLAINTIFFS' COMPLAINT." (pp. 9-10, Rollo)

On December 9, 1986, the Court of Appeals rendered its assailed decision, the dispositive portion of which follows:

"IN VIEW WHEREOF, judgment modified, such that defendant Babst and defendant Pacific Banking are both condemned in their primary capacity to pay unto Hart the sum of P100,000.00 with legal interest from the date of the foreclosure sale on 19 February 1958 until fully paid, plus P15,000.00 as attorney's fees, also to earn legal interest from the date of the filing of Civil Case Nos. 35524, until fully paid, plus the costs, but subject to reimbursement of Pacific Banking from Babst whatever Pacific Banking should pay unto Hart on account of this judgment, the other defendants are absolved with no more pronouncement as to costs with respect to them." (pp. 62-63, Rollo)

Hence this petition with petitioners contending that:

"a. Respondent Court of Appeals committed a grave error in not applying in favor of the herein petitioner the clear and unequivocal ruling of this Honorable Court in the case of Philippine Engineering vs. Green, 48 Phil. 466, that "an agreement to extend the time of payment in order to be valid must be for a definite time", which was relied upon by the trial court in overruling the private respondents' claim that petitioners had granted them orally an indefinite extension of time to pay the loan;

b. Respondent Court of Appeals committed a grave error in finding that petitioner bank agreed to an indefinite extension of time to pay the loan on the basis of the testimony of private respondent Hart contained in his deposition which was admitted in evidence over the petitioners' objection; and that said finding is clearly violative of parol evidence rule.

c. Respondent Court of Appeals committed a grave error in ignoring the legal presumption of good faith established by Article 527 of the New Civil Code when it imputed bad faith to petitioner in foreclosing the pledge and in not considering the issue to have been finally disposed of by the trial court in its resolution, dated March 19, 1958 dissolving the writ of preliminary injunction and expressly allowing the foreclosure sale.

d. Respondent Court of Appeals committed a grave error in condemning petitioners to pay damages to private respondents notwithstanding that petitioner bank merely exercised a right under the law in foreclosing the pledge;

e. Respondent Court of Appeals committed a grave error in holding petitioner Chester G. Babst personally liable to private respondents under Articles 2180 and 2181 of the New Civil Code.

f. Respondent Court of Appeals committed a grave error in sentencing petitioner Chester G. Babst to reimburse his co-petitioner bank, whatever amounts the latter may be required to pay the private respondents on account of the judgment, notwithstanding that said bank had not filed a cross-claim against him and there was absolutely no litigation between them." (pp. 14-15, Rollo)

We find for the respondents on the following grounds:

First, petitioners allege that the Court of Appeals erred in deviating from the principle and rule of stare decisis by not applying in favor of petitioners the ruling in the case of Philippine Engineering v. Green (48 Phil. 466) that "an agreement to extend the time of payment in order to be valid must be for a definite time" which was relied upon by the trial court in overruling the private respondents' claim that the petitioners had granted them orally an indefinite extension of time to pay the loan.

A reading of the Philippine Engineering Co. case shows that the authority quoted from (i.e. 8 Corpus Juris

425-429) was not the ground used by the Court in not giving credit to therein defendant's statement as to the purported agreement for an indefinite extension of time for the payment of the note. The principle relied upon in that case was the dead man's statute. The Court stated that the reason for not believing the purported agreement for extension of time to pay the note was that there was no sufficient proof of the purported agreement because:

"Here we have only the defendant's statement as to the purported agreement for an indefinite period of grace, with one now dead. Such proof falls far short of satisfying the rules of evidence." (Phil. Engineering v. Green 48 Phil. p. 468)

In the case at bar, the parties to the purported agreement, Hart and Babst, were still alive, and both testified in the trial court regarding the purported extension. Their testimonies are in fact, quoted in the decision of the respondent Court of Appeals (pp 49-54, Rollo).

We also note, that the rule which states that there can be no valid extension of time by oral agreement unless the extension is for a definite time, is not absolute but admits of qualifications and exceptions.

"The general rule is that an agreement to extend the time of payment, in order to be valid, must be for a definite time, although it seems that no precise date be fixed, it being sufficient that the time can be readily determined." (8 C.J. 425)

In case the period of extension is not precise, the provisions of Article 1197 of the Civil Code should apply.

In this case, there was an agreement to extend the payment of the loan, including the first installment thereon which was due on or before July 1957. As the Court of Appeals stated:

"x x x - and here, this court is rather well convinced that Hart had been given the assurance by the conduct of Babst, Executive Vice President of Pacific Bank, that payment would not as yet be pressed, and under 1197 New Civil Code, the meaning must be that there having been intended a period to pay - modifying the fixed period in original promissory note, really, the cause of action of Pacific Bank would have been to ask the Courts for the fixing of the term;" (pp. 59-60, Rollo)

The pledge executed as collateral security on February 9, 1958 no longer contained the provision on an installment of P50,000.00 due on or before July 1957. This can mean no other thing than that the time of payment of the said installment of P50,000.00 was extended.

It is settled that bills and notes may be varied by subsequent agreement. Thus, conditions may be introduced and arrangements made changing the terms of payment (10 CJS 758). The agreement for extension of the parties is clearly indicated and may be inferred from the acts and declarations of the parties, as testified to in court (pp. 49-52, Rollo).

The pledge constituted on February 19, 1958 on the shares of stocks of Insular Farms, Inc. was sufficient consideration for the extension, considering that this pledge was the additional collateral required by Pacific Banking in addition to the continuing guarantee of Clarkin.

Petitioners contend that the admission of Joseph Hart's testimony regarding the extension of time to pay, over the petitioners' objections, was violative of the parol evidence rule. This argument is untenable in view of the fact that Hart's testimony regarding the oral agreement for extension of time to pay was admitted in evidence without objection from petitioner Babst when the same was first offered as evidence before the trial court. Without need therefore of a lengthy discussion of the background facts on this issue, and even granting that said testimony violated the parol evidence rule, it was nevertheless properly admitted for failure of petitioner to timely object to the same. Well settled is the rule that failure to object to parol evidence constitutes a waiver to the admissibility of

said parol evidence (see *Talosig v. Vda. de Niebe*, 43 SCRA 472).

Petitioners likewise argue that the Court of Appeals erred in ignoring the presumption of good faith provided in Art. 527 of the Civil Code when it imputed bad faith to petitioners in foreclosing the pledge. They argue in support thereof that the extrajudicial foreclosure was held only after it was sanctioned by the trial court; and that the main ground alleged by the private respondents against the foreclosure was the alleged grant by Pacific Banking Corporation of an indefinite extension of time to pay the obligation; that private respondents did not adduce any evidence to prove the grant of extension, for which reason the trial court did not believe that there was such a grant; that in view thereof, the foreclosure which even the Court of Appeals considered as valid, cannot be considered to have been done in bad faith.

The presumption of good faith of possession provided in Article 527, is only a presumption *juris tantum*. Said presumption cannot stand in the light of the evidence to the contrary in the record.

It was established that there was an agreement to extend indefinitely the payment of the installment of P50,000.00 in July 1957 as provided in the promissory note. Consequently, Pacific Banking Corporation was precluded from enforcing the payment of the said installment of July 1957, before the expiration of the indefinite period of extension, which period had to be fixed by the court as provided in Art. 1197 of the Civil Code (10 CJS p. 7611, citing *Drake vs. Pueblo Nat. Bank*, 96 P 999, 44 Colo. 49).

Even the pledge which modified the fixed period in the original promissory note, did not provide for dates of payment of installments, nor of any fixed date of maturity of the whole amount of indebtedness. Accordingly, the date of maturity of the indebtedness should be as may be determined by the proper court under Art. 1197 of the Civil Code. Hence, the disputed foreclosure and the subsequent sale were premature.

The whole indebtedness was guaranteed by the continuing guaranty of Clarkin, who had a corresponding deposit with Pacific Banking which guaranty and deposit, Babst and Charles Chua, president of Pacific Banking, had actual knowledge of.

The Court of Appeals noted that no demand for payment of the P50,000.00 was made right after it allegedly fell due. It was only on March 4, 1958 or 13 days after the execution of the pledge instrument on February 19, 1958 that PBC presented its demand for payment to Insular Farms.

As found by the Court of Appeals, there was really no investigation of Insular Farms' ability to pay the loan after the pledge was executed but before the demand for payment, considering that the latter was made barely two weeks after the execution of the pledge.

The inconsistency of the petitioners' position vis-a-vis the evidence on record is apparent. According to Babst, the investigation was made by Mr. Joseph Tupaz, who rendered his report (TSN, IX; 6-9, C. Babst). The report, however, as found by the Court of Appeals, was dated August 28, 1957 way before the pledge was executed on February 19, 1958.

Babst also identified an auditor's report by Sycip, Gorres and Velayo dated March 17, 1958. The first paragraph of the report states that the auditors went to inspect Insular Farms pursuant to a request of Babst dated March 5, 1958 - that is, as found by the Court of Appeals just one day after Babst had through his letter of March 4, 1958, threatened Insular Farms, Clarkin and Hart, with the remedies available to Pacific Bank if the whole loan was not paid within 48 hours. This can also mean that the investigation by the auditing firm was a well conceived subterfuge, when all the while, foreclosure was already intended against private respondents.

On account of the foregoing, the Court of Appeals concluded that the foreclosure was an act of bad faith:

"5th - Foregoing cannot but convince this Court that the foreclosure was not an act of good faith on the part of the Pacific Banking, - for it must be bound by the acts or representations, active or tacit of its agent or its Executive Vice- President Babst, x x x ." (pp. 56-57, Rollo)

Petitioners furthermore claim that the Court of Appeals erred in ordering them to pay damages to private respondents as they were merely exercising a right under the law in foreclosing the pledge. They also argue that assuming that private respondent suffered damages on account of the foreclosure, such damages would be *damnum absque injuria*, the damage having been caused by the lawful and proper exercise of the right to foreclosure, and an act of prudence on the part of Pacific Banking Corporation to protect its own interests and those of its depositors.

In the light of the above discussion and our finding that the foreclosure sale was premature and done in bad faith, petitioners are liable for damages arising from a quasi-delict. We see no compelling reason to set aside the findings of the respondent court on this matter.

Finally, the petitioners claim that it was error for the respondent court to hold petitioner Chester G. Babst personally liable to private respondents under Articles 2180 and 2181 of the Civil Code. Petitioners also contend that it was error to order Chester G. Babst to reimburse Pacific Banking whatever Pacific Banking may be required to pay the private respondents, inasmuch as Pacific Banking has not filed a cross claim against Chester G. Babst.

The Court of Appeals applied Article 2180 of the Civil Code, under which, "employers shall be liable for the damages caused by their employees x x x acting within the scope of their assigned tasks." Chester G. Babst, as admitted, was Executive Vice-President of Pacific Banking Corporation and "acted only upon direction by the Board of Directors of the Pacific Banking Corporation." (p. 127, Rollo) The appellate court also applied Article 2181 of the same Code which provides that "whoever pays for the damages caused by his dependents or employees may recover from the latter what he has paid or delivered in satisfaction of the claim." (Art. 2181, Civil Code)

It must be noted, however, that, as between Pacific Banking and Babst, the law merely gives the employer a right to reimbursement from the employee for what is paid to the private respondent. Article 2181 does not make recovery from the employee a mandatory requirement. A right to relief shall be recognized only when the party concerned asserts it through a proper pleading filed in court. In this case, the employer, Pacific Banking Corporation did not manifest any claim against Babst by filing a cross-claim before the trial court; thus, it cannot make its right automatically enforceable. Babst was made a party to the case upon the complaint of the private respondents in his official capacity as Executive Vice President of the bank. In the absence of a cross-claim against Babst, the court has no basis for enforcing a right against him to which his co-defendant may be entitled. We leave the matter to the two petitioners' own internal arrangements or actions should the bank decide to charge its own officer.

WHEREFORE, the petition for review on certiorari is DISMISSED subject to a MODIFICATION with respect to the personal liability of petitioner Chester G. Babst to Pacific Banking Corporation which is SET ASIDE.

SO ORDERED.

Feliciano, Bidin, and Cortes, JJ., concur.

Fernan, C.J., (Chairman), no part.

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