

HEIRS OF CELERINA AYING, NAMELY: FLORENCIO A. MALINGIN, ANTERO A. MALINGIN, BERNARDO A. MALINGIN, THE CHILDREN OF MACARIO A. MALINGIN, NAMELY: ALFREDO L. MALINGIN, ORLANDO L. MA...

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

Before us is an Appeal[2] from the April 19, 2004 Decision[3] of the Regional Trial Court, 7[th] Judicial Region, Branch 54, Lapu-lapu City in Civil Case No. 4262-L for Declaration of Nullity of Instruments, Quieting of Title and Damages, the dispositive portion thereof reads:

“WHEREFORE, in the light of the foregoing considerations, judgment is hereby rendered DISMISSING the present Complaint filed by the plaintiffs for lack of merit. Likewise, defendants' Counterclaim is, as it is hereby dismiss for insufficiency of evidence.

No pronouncement as to costs.

SO ORDERED.”

The facts of the case as culled from the records are as follows:

This case stemmed from a complaint[4] lodged by plaintiffs-appellants against defendants-appellees for Declaration of Nullity of Instruments, Quieting of Title and Damages. They alleged in the complaint that: the late Celerina Aying is the owner of a parcel of land denominated as Lot 3959 located in Maribago, Lapu-lapu City with an area of 13,691 square meters and covered by Original Certificate of Title (OCT) No. RO-1868;[5] Celerina died single and without issue thus leaving as only heirs the children and grandchildren of her sister Tomasa Aying namely, Florencio, Antero, Hernando, Macario and Victor, all surnamed Malingin; Macario and Victor are already dead and are survived by the following: Macario's children - Alfredo, Rolando and Rogelio, all surnamed Malingin and Victor's children - Rufino, Dorotea, Benedicto, Bernardo, Rosita and Alfonso, all surnamed Malingin; plaintiffs and their predecessors-in-interest have been in continuous, actual and physical possession of the subject lot since time immemorial in the concept of owners; sometime in June 1995, plaintiffs discovered that OCT No. RO-1868 was canceled by virtue of an Extra-Judicial Settlement and Absolute Deed of Sale[6] dated December 24, 1986 in favor of Site Traders and Developers, Inc. represented by Oscar H. Chua, on the basis thereof, Transfer Certificate of Title (TCT) No. 17204 was issued to the latter; subsequently, TCT No. RO-1868 was canceled by virtue of a Deed of Absolute Sale dated May 24, 1998 in favor of Cebu Agri-Business Inc. represented by Ely H. Chua to whom TCT No. 18600[7] was thereafter issued; that the Extra-Judicial Settlement and Absolute Deed of Sale is null and void because the persons who claimed to be the heirs of Celerina in the said instrument are not in fact heirs of the latter; the signatures of the persons who posed as heirs thereat, particularly Juan and Eugenia Hiyas, were forged or simulated; defendants Ybañez and Amistad who acted as witnesses to the Extra-Judicial Settlement and Absolute Deed of Sale, conspired with the rest of the defendants in perpetrating fraud; that Cebu Agri-Business is not a purchaser in good faith and for value because it

is also in conspiracy with the other defendants; that because of the illegal acts of the defendants, plaintiffs suffered damages; plaintiffs then prayed that the Extra-Judicial Settlement and Absolute Deed of Sale and the Deed of Sale in favor of Cebu Agri-Business Inc. be declared null and void; that OCT No. RO-1868 be reinstated and plaintiffs be declared as co-owners of the subject parcel of land; and that the defendants be ordered to pay damages to herein plaintiffs.

In their Answer with Counterclaim,[8] defendants-appellees denied the material allegations in the complaint and averred that plaintiffs-appellants have no cause of action against them and assuming they have, the same has long prescribed considering that Celerina Aying died before World War II. Plaintiffs-appellants are also guilty of laches. Moreover, their alleged cause of action to the effect that defendants-appellees committed fraud is also barred by the statute of limitations. Defendants-appellees then prayed for the dismissal of the complaint and for damages.

Pre-trial was then conducted and per the Order of Pre-Trial Conference[9] dated January 10, 1997, the following issues were raised:

- Whether or not said Extra-Judicial Settlement of Estate and Absolute Deed of Sale binds the plaintiffs who had not participated therein;
- Whether or not the present action is barred by prescription and/or laches.

Thereafter trial on the merits ensued. The plaintiffs presented Rolando Malingin[10] and Poilo Pangatungan[11] as their witnesses. Their testimonies are hereunder summarized as follows:

Rolando testified that she knew the decedent Celerina Aying; that she died single with no children sometime in 1934[12]; her nearest relative is her only sister Tomasa Aying; Tomasa has since died but was married to Hilarion who is also dead now; Tomasa and Hilarion had children namely: Florencio, Victor, Macario, Benaldo and Antero, all surnamed Malingin; Victor and Macario are already deceased; Macario's children are Rolando (witness), Rogelio and Alfredo while Victor's children are Rufino, Benedicto, Alfonso, Rosita and Dorotea; witness also knew defendant Nicetas Ybañez and Paula Amistad being his neighbors in Barangay Pajac, Lapa-lapu City; he also knows the defendants-corporations and their owners Oscar H. Chua and Ely H. Chua; sometime during the lifetime of witness' father, Ybañez and Amistad, representing Simon Chuahe of Cebu Agri-Business Inc., approached him regarding the sale of the parcel of land subject of this case which has been occupied by the witness since birth; they asked his father to sign a document of sale but his father refused; they were surprised why, later on, defendants became owners of the subject parcel of land already by virtue of an Extra-Judicial Settlement and Absolute Deed of Sale dated December 24, 1986, which the witness discovered sometime in 1995 when they went to the city hall to pay taxes but found out that it was registered in the name of somebody else already; the document was signed by Juan Diaz, Leo Diaz and Eugenia Diaz who are not related to the heirs of Celerina Aying; the witness knew these persons who died in 1969 (per the Death Certificate of Juan)[13] and 1986 (Leo) although he does not know when Eugenia died; he got worried about this and converting his worries in monetary terms, it would amount to P50,000.00; to teach the perpetrators a lesson, he is asking for P50,000.00 and in instituting this case he agreed to pay his counsel 30% of the value of the lot; he also spent P5,000.00 in litigation expenses.

The testimony of the above witness was corroborated by the testimony of the second witness for the plaintiff Poilo Pangatungan.

The defendants on the other hand presented the followings witnesses: Sergio Amistad,[14] Nicetas Ybañez,[15] Paula Amistad,[16] Simon Chuahe,[17] Gene Chua,[18] and Rory Jon Sepulveda.[19] The version of the

defendants is as follows:

The subject parcel of land, Lot 3959, located in Abuno, Maribago, Lapu-lapu City was originally owned by Silvina Aying. Silvina has children namely: Juan, Eusebio and Eugenia Amistad Hiyas. Juan and Eusebio were residing in Compostela while Eugenia was residing in the subject lot with her mother Silvina up to the time of the death of Silvina in 1938. Thereafter, Eugenia continued to reside thereat and sometime in 1965 she decided to sell the lot. Nicetas Ybañez, who used to be a neighbor of Silvina and Eusebia, then undertook to trace the documentary history of the lot and in her research, she found out that in 1949, a portion of the lot was transferred by Silvina to Hilarion Malingin, particularly the portion he was then tilling, per an Affidavit of Transfer[20] dated January 10, 1949. At the time Hilarion executed the affidavit, Silvina was already dead. Nicetas informed Eugenia about the transfer and that only a portion of the original lot remained, the latter told her to proceed to sell the remaining portion (5,000 plus square meters) as she and her brothers already agreed to sell the same and it was eventually sold to Simon Chuahe. Meanwhile, the portion (7,000 plus square meters) that was transferred to Hilarion Malingin as sold by him to a certain Climaco by defendant Paula Amistad. Climaco subsequently sold the lot to defendant Site Traders, the same entity who bought the other portion. Site Traders then consolidated ownership over the two parcels of land. Atty. Gabriel then prepared an extra-judicial declaration of heirs and summary settlement of the estate of the deceased Celerina (Silvina) Aying[21] which was signed by the heirs of Silvina Aying namely, Eugenia, Juan and Leo, (son of Eusebio who died already), Nicetas also signed the same as witness together with Paula Amistad. The document erroneously contained the name Celerina but it was actually referring to Silvina and that Celerina and Silvina refer to one and the same person.

The above testimony was corroborated by the next witness Paula Amistad who testified that she also lived near the subject parcel of land sometime in the 70's; that she was the person who processed the transfer of the 7,000 square meter portion from Hilarion Malingin to Climaco, Chiongbian and Canesares because his husband was working with them. Paula testified that the transfer from Hilarion Malingin to Climaco et al. was effected pursuant to an Extra-Judicial Declaration of Heirs with Deed of Absolute Sale[22] signed by the original transferee Hilarion, together with Macario and Victor, all surnamed Malingin. Macario and Victor were the children of Hilarion Malingin and Tomasa Aying. All three are already dead. Macario was survived by his son Rolando. The said lot was then sold by Climaco et al to Site Traders who now own and possess it and who has hired a care taker in the person of Sergio Amistad. Sergio Amistad has confirmed this fact in his testimony.

Simon Chuahe also testified for the defendants. He stated that he is one of the defendants in the instant case, the other defendants Oscar and Ely are his sons and that he is one of the owners of Site Traders and Developers Inc together with his other children and his wife. He confirmed that he bought 5,000 plus square meters of Lot 3959 from Eugenia Hiyas in July 1967 after the same was offered for sale to him by Nicetas. He also testified that before the purchase, he met with the owners, Eugenia, her husband, Paula Amistad, Juan, Nicetas and one other person whose name he forgot. They agreed that the purchase price shall be P1,800.00 and that Eugenia whose house was located on the said lot, may continue to live thereon until told to vacate. They also agreed that Nicetas will facilitate the transfer. There was a Torrens Certificate of Title covering the parcel of land but it was lost during World War II. Instead, Eugenia presented to him a Certification[23] issued by the Clerk of Court of the then Court of First Instance (CFI) showing that the decree owner thereof is Celerina Aying. The lot consisted of 13,000 square meters but Eugenia was selling only 5,000 square meters thereof because the rest already belonged to a certain Hilarion Malingin. He paid a downpayment of P300,00 and the balance, per their agreement, was to be paid upon the execution of the document of sale or the extra-judicial declaration of heirs prepared by the vendors. When the said document was delivered to him, the vendors also delivered Tax Declaration No. 01336 covering Lot 3959-part which was already under his name. He then paid taxes thereon continuously as shown by various tax receipts.[24] Tax Declaration No. 01336 was eventually canceled and a new one issued by the local

government which is Tax Declaration No. 00220 which was in turn canceled by Tax Declaration No. 00269 and then by Tax Declaration No. 00263 and finally by Tax Declaration No. 00284.[25] Eugenia and Leo finally left the land sometime in the middle of the 70's and since then nobody resided nor planted crops thereon. In 1987, he bestowed ownership of the subject parcel of land to Site Traders and Developers Inc by virtue of a Waiver of Rights[26] executed by him and his wife in favor of Site Traders.

Simon Chuahe also testified that he has in fact, as co-owner thereof, filed a petition[27] for judicial reconstitution of the lost title of the subject parcel of land sometime in 1971 which was granted in his favor sans the objection of herein plaintiffs. The same was effected by virtue of the extra-judicial settlement which was duly published in a newspaper of general circulation.[28] The reconstituted title was under the name of the original owner Celerina Aying per Original Certificate of Title RO-1868.[29]

Sometime after the issuance of Original Certificate of Title RO-1868, particularly in 1974, he got in touch with the owners of the 7000 square meter portion, Climaco, Chiongbian and Canizares so that the property will be subdivided. Initially, they were not able to agree on a subdivision plan because of the expenses. He proposed to buy the same but they were also unable to agree on a price until sometime in 1987 when he was told by Paula Amistad that Climaco et al. were interested to sell their property again which was then covered by Tax Declaration No. 00277.[30] This was also the year when Site Traders acquired his portion so he consulted with the board of directors and proposed that they also acquire the other portion which they did pursuant to a Waiver of Right or Claim over Real Property.[31] To consolidate ownership over the entire parcel of land, they engaged Paula and Nicetas to facilitate the process. A new Extra-Judicial Settlement was executed by the heirs of Celerina for the entire Lot 3959 dated December 24, 1986.

Eventually, Original Certificate of Title RO-1868 was canceled, Transfer Certificate of Title 17204[32] was issued under the name of Site Traders on the strength of the documents mentioned above.

After that, Site Traders sold the subject parcel of land to Cebu Agri-Business Inc. The President of Cebu Agri-Business Inc., Gene Chua, testified and stated that the corporation purchased the subject parcel of land consisting of 1.3 hectares on May 28, 1988.[33] At that time it had no structures and no agricultural plants were planted thereon. It was then covered by a TCT in the name of Site Traders and Developers Inc. Upon purchase, they then consistently paid real property taxes thereon. They also hired Sergio Amistad who was living in the adjacent area as caretaker thereof and repaired the fence some time in 1990. At that time, nobody came to complain about it. Only the instant complaint was made which prompted the defendants to hire a lawyer and they are asking for damages because of it. The witness, together with his staff, traced the documentary history of the subject land by going to the Office of the Register of Deeds where they got copies of titles and other pertinent documents like tax declarations. They found out that at that time, there are no records of liens or encumbrances pertinent to the subject land. The witness identified Transfer Certificate of Title No. 18600[34] covering the parcel of land under the name of Cebu Agri-Business and its Tax Declaration No. 01579[35] and Tax Declaration No. 00355.[36]

On cross-examination and re-direct examination, the witness testified that: he is also a member of the board of directors of Site Traders from whom Cebu Agri-Business purchased the subject lot but he is not involved in the day to day operation of Site Traders; the President of Site Traders is his brother who is also a member of the board of Cebu Agri-Business; the purchase price was P24,000.00 paid in cash; Cebu Agri-Business was planning to put up a manufacturing facility for animal feeds in the subject lot.

The defendants also presented Atty. Rory Jon Sepulveda who corroborated the testimonies of the above witnesses by tracing the documentary history of the subject parcel of land based on available records of the City Assessors

Office of Lapu-lapu City and other existing documents.

Based on the foregoing, the RTC, on April 19, 2004, rendered the assailed Decision dismissing the complaint. Displeased with the ruling of the court a quo, plaintiffs-appellants interposed the instant appeal and in their Appellant's Brief,[37] the following assignment of error was made, to wit:

THE TRIAL COURT ERRED IN DECLARING THAT THE DEFENDANTS PRESENTED PREPONDERANT EVIDENCE IN PROVING THEIR CLAIM OF OWNERSHIP OVER LOT 3959.

Appellants contend that the RTC erred when it did not categorically rule on the issue of the validity of the extra-judicial settlement of estate and deed of absolute sale. They further argued that the RTC erred in not giving credence to plaintiffs-appellants' testimonies to the effect that they are the true heirs of the late Celerina Aying.

We do not agree with appellants.

The instant case is primarily for quieting of title. The Supreme Court, in the case of *SPOUSES EROSTO SANTIAGO and NELSIE SANTIAGO vs. MANCER VILLAMOR, CARLOS VILLAMOR, JOHN VILLAMOR and DOMINGO VILLAMOR, JR.*,[38] defined the said action as follows:

"Quieting of title is a common law remedy for the removal of any cloud, doubt or uncertainty affecting title to real property. The plaintiffs must show not only that there is a cloud or contrary interest over the subject real property, but that they have a valid title to it. Worth stressing, in civil cases, the plaintiff must establish his cause of action by preponderance of evidence; otherwise, his suit will not prosper."

Appellants' claim over the subject property is anchored on their having inherited the same from the original owner thereof, Celerina Aying. They claim to be the nephews of Celerina being the sons of Celerina's sister, Tomasa. The rest of the appellants are the grandchildren of Tomasa from her deceased sons, Macario and Victor. Appellants likewise claimed that Celerina died without any issue.

We note that appellants' claim of ownership over the subject parcel of land has not been sufficiently established by the evidence on record. In a civil case, the burden of proof is on the plaintiff to establish his case through a preponderance of evidence. If he claims a right granted or created by law, he must prove his claim by competent evidence.[39]

Instructive is the ruling of the Supreme Court in the case of *SAMSON CHING, VS. CLARITA NICDAO AND HON. COURT OF APPEALS*,[40] to wit:

"It is a basic rule in evidence that the burden of proof lies on the party who makes the allegations - *Et incumbit probatio, qui dicit, non qui negat; cum per rerum naturam factum negantis probatio nulla sit* (The proof lies upon him who affirms, not upon him who denies; since, by the nature of things, he who denies a fact cannot produce any proof). In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of the credible evidence." Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. Section 1, Rule 133 of the Revised Rules of Court offers the guidelines in determining preponderance of evidence:

SEC. 1. Preponderance of evidence, how determined. - In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their

testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.”

As correctly pointed out by the RTC, appellants were not able to present any documentary evidence to support their claim of ownership such as tax declarations, tax receipts, titles and the like. Appellees on the other hand, were able to trace their ownership and possession thereof from their predecessors-in-interest to the present.

From the evidence presented by the appellees, the history of Lot 3959 was established as follows: the lot was first declared in 1948 in the name of the heirs of Silvina Aying per Tax Declaration No. 24856[41] this was canceled in January 1949 by an affidavit of transfer of real property[42] allegedly executed by Silvina Aying in favor of Hilarion Malingin and Tomasa Aying (predecessors-in-interest of plaintiffs) covering 7,846 square meters thereof; Tax Declaration No. 10700[43] covering Lot 3959-part with an area .7846 hectare was issued in the names of Hilarion Malingin and Tomasa Aying and Tax Declaration No. 10701[44] covering Lot 3959 covering an area of 5,845 square meters was issued to Silvina Aying; Tax Declaration No. 10700 was canceled by Tax Declaration No. 00189[45] but still under the names of Hilarion Malingin and Tomasa Aying for the same area; this was in turn canceled by Tax Declaration 00221[46] in 1970 but still under the same name and for the same area; Tax Declaration 00221 was subsequently canceled by Tax Declaration No. 01196[47] issued under the names of Jose Climaco et al. by virtue of an Extra-Judicial Declaration of Heirs with Deed of Sale dated February 23, 1968;[48] Tax Declaration Nos. 00238,[49] 00268,[50] 00256,[51] 00277[52] were issued in the subsequent years all in the name of Climaco et al. and for the same area; Tax Declaration No. 00277 was canceled by virtue of a Waiver of Rights dated March 2, 1997 executed by Climaco et al., consequently, Tax Declaration No. 01472, a consolidated tax declaration (as it now covers Lot 3959 with a total area of 1.3691 hectares), was issued now in the name of Site Traders.

For Lot 3959-part covering an area of 5,845 square meters, the appellees were able to trace its documentary history as follows: after Silvina Aying transferred the .7846 hectare portion of the lot, a separate tax declaration was issued in the name of Silvina Aying which is Tax Declaration No. 10701. This was canceled by Tax Declaration 00188[53] by virtue of a deed of absolute sale covering that portion of the lot and executed by Geronimo Aying in favor of Leon Amistad[54] and another one executed by Cesaria Arong in favor also of Leon Amistad;[55] Tax Declaration 00188 was canceled by Tax Declaration No. 01336 issued in the name of Simon Chuahe pursuant to an Extra-Judicial Declaration of Heirs and Summary Settlement of Estate dated July 17, 1967 and an Affidavit[56] executed by Leon Amistad approving and confirming the sale of the heirs of Celerina in favor of Simon Chuahe; subsequent tax declarations were issued to Simon Chuahe as follows: Tax Declaration No. 00220, 00239, 00269, 00263, 00284;[57] Tax Declaration 00284 was canceled by virtue of a Waiver Rights executed by Simon Chuahe in favor of Site Traders and the latter was issued Tax Declaration 01472 which was also canceled to give way to the consolidation mentioned above.

Clearly then, the preponderance of evidence lies in favor of the appellees.

Anent appellants' contention that the RTC erred when it did not categorically rule on the issue of the validity of the Extra-Judicial Settlement of Estate and Deed of Absolute Sale even if the same was among the issues stated in the pre-trial order, we find the same bereft of merit. Settled is the rule that a pre-trial order is not meant to be a detailed catalogue of each and every issue that is to be or may be taken up during the trial.[58] Considering the factual milieu in this case where the appellants utterly failed to substantiate their claims while the appellees were able to present evidence of their ownership, the RTC was correct in disregarding all other collateral issues raised by the appellants.

WHEREFORE, on the view above taken, the April 19, 2004 Decision of the Regional Trial Court, 7th Judicial Region, Branch 54, Lapu-lapu City in Civil Case No. 4262-L is hereby AFFIRMED in toto.

SO ORDERED.

Maxino, P.A.A., and Francisco, R.C., JJ., concur.

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- [1] Should be Rolando per Transcript of Stenographic Notes dated March 13, 1997 at p. 6.
- [2] Notice of Appeal, Records at p. 271.
- [3] Records at pp. 250-262.
- [4] Records at pp. 1-5.
- [5] Records at pp. 8-10 (photocopy).
- [6] Records at p. 14 (photocopy).
- [7] Records at pp. 6-7 (photocopy)
- [8] Records at pp. 22-24.
- [9] Records at pp. 40-42.
- [10] Transcript of Stenographic Notes dated March 13, 1997, July 9, 1997.
- [11] Transcript of Stenographic Notes dated January 14, 1998, March 10, 1998.
- [12] Year provided by witness Poilo Pangatungan.
- [13] Records at p. 62.
- [14] Transcript of Stenographic Notes dated November 26, 1998.
- [15] Transcript of Stenographic Notes dated May 11, 1999.
- [16] Transcript of Stenographic Notes dated July 13, 1999.
- [17] Transcript of Stenographic Notes dated September 8, 1999, December 6, 1999 and August 22, 2000.
- [18] Transcript of Stenographic Notes dated October 17, 2000, April 3, 2001 and June 7, 2001.
- [19] Transcript of Stenographic Notes dated August 26, 2002, December 16, 2002, February 19, 2003.
- [20] Records at p. 169.
- [21] Records at pp. 174-176.
- [22] Records at pp. 170-171.
- [23] Records at p. 172.
- [24] Records at pp. 183-196.
- [25] Series of Tax Declarations, Records at pp. 177-182.
- [26] Records at p. 205.

- [27] Records at pp. 199-200.
- [28] Records at pp. 197-198.
- [29] Records at pp. 201-203.
- [30] Records at p. 207.
- [31] Records at p. 206.
- [32] Records at p. 208-210.
- [33] Records at pp. 213-214.
- [34] Records at p. 212.
- [35] Records at p. 227.
- [36] Records at p. 228.
- [37] Rollo at pp. 33-36.
- [38] G.R. No. 168499 , November 26, 2012.
- [39] Rizal Commercial Banking Corp. vs Marcopper Mining Corp., G. R. No. 170738, September 12, 2008, citing SSS vs Chaves, G. R. No. 151259, October 13, 2004, 440 SCRA 269, 277.
- [40] G.R. No. 141181, April 27, 2007
- [41] Exhibit 27.
- [42] Exhibit 1.
- [43] Exhibit 28.
- [44] Exhibit 29.
- [45] Exhibit 30.
- [46] Exhibit 31.
- [47] Exhibit 32.
- [48] Exhibit 2.
- [49] Exhibit 33.
- [50] Exhibit 34.
- [51] Exhibit 35.
- [52] Exhibit 19.
- [53] Exhibit 38.
- [54] Exhibit 37.
- [55] Exhibit 38.
- [56] Exhibit 39.

[57] All previously marked.

[58] EUFEMIA BALATICO VDA. DE AGATEP vs. ROBERTA* L. RODRIGUEZ and NATALIA AGUINALDO VDA. DE LIM, G.R. No. 170540, October 28, 2009.

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