

NARCISO MELENDREZ AND ERLINDA DALMAN, COMPLAINANTS, VS. ATTY. REYNERIO I. DECENA, RESPONDENT.

Adm. Case No. 2104. August 24, 1989

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PER CURIAM:

In a sworn complaint^[1] dated 25 September 1979, the spouses Erlinda Dalman and Narciso Melendrez charged Reynerio I. Decena, a member of the Philippine Bar, with malpractice and breach of trust. The complainant spouses alleged, among others, that respondent had, by means of fraud and deceit, taken advantage of their precarious financial situation and his knowledge of the law to their prejudice, succeeded in divesting them of their only residential lot in Pagadian City: that respondent, who was their counsel in an estafa case against one Reynaldo Pineda, had compromised that case without their authority.

In his answer dated 18 March 1980, respondent denied all the charges levelled against him and prayed for the dismissal of the complaint.

By resolution dated 14 April 1980, the administrative complaint was referred to the Office of the Solicitor General for investigation, report and recommendation.

Accordingly, the Solicitor General forthwith deputized the City Fiscal of Pagadian City, Jorge T. Almonte, to conduct the necessary investigation, with instructions to submit thereafter his report and recommendation thereon. Fiscal Almonte held several hearings on the administrative case until 15 July 1982, when he requested the Solicitor General to release him from the duty of investigating the case.

On 10 September 1982, the Solicitor General granted Fiscal Almonte's request and in his stead appointed the Provincial Fiscal of Zamboanga del Sur, Pedro S. Jamero, who resumed hearings on 15 June 1983.

Respondent filed with this Court, on 9 June 1987, a motion seeking to inhibit Fiscal Jamero from hearing the case followed by an urgent motion for indefinite postponement of the investigation. Both motions were denied by the Court in a Resolution dated 21 September 1987 with instructions to the Solicitor General to complete the investigation of the administrative case and to render his report and recommendation thereon within thirty (30) days from notice.

On 19 July 1988, the Solicitor General submitted his Report and Recommendation^[2] dated 21 June 1988. In his Report, after setting out the facts and proceedings held in the present case, the Solicitor General presented the following

"FINDINGS

Complainants allege that on August 5, 1975, they obtained from respondent a loan of P4,000.00. This loan was secured by a real estate mortgage (Annex C, Complainants' Complaint, p. 16, records). In the said Real Estate Mortgage document, however, it was made to appear that the amount borrowed by complainants was P5,000.00. Confronted by this discrepancy, respondent assured complainants that said document was a mere formality, and upon such assurance, complainants signed the same. The document was brought by complainant

Narciso Melendres to a Notary Public for notarization. After the same was notarized, he gave the document to respondent. Despite the assurance, respondent exacted from complainants P500.00 a month as payment for what is beyond dispute usurious interest on the P5,000.00 loan. Complainants religiously paid the obviously usurious interest for three months: September, October and November, 1975. Then they stopped paying due to financial reverses. In view of their failure to pay said amounts as interest, respondent prepared a new document on May 7, 1976, a Real Estate Mortgage (Annex D, Complaint, p. 18, records) over the same lot 3125-C, replacing the former real estate mortgage dated August 5, 1975, but this time the sum indicated in said new contract of mortgage is P10,000.00, purportedly with interest at 19% per annum. In this new Real Estate Mortgage, a special power of attorney in favor of respondent was inserted, authorizing him to sell the mortgaged property at public auction in the event complainants fail to pay their obligation on or before May 30, 1976. Without explaining the provisions of the new contract to complainants, respondent insisted that complainants sign the same, again upon the assurance that the document was a mere formality. Unsuspecting of the motive of respondent, complainants signed the document. Complainants Narciso Melendres again brought the same document to a Notary Public for notarization. After the document was notarized, he brought the same to respondent without getting a copy of it.

Complainants, relying on the assurance of the respondent that the second Real Estate Mortgage was but a formality, neither bothered to ask from respondent the status of their lot nor tried to pay their obligation. For their failure to pay the obligation, the respondent on October 12, 1976, applied for the extrajudicial foreclosure of the second real estate mortgage (Exhibit 16, Respondent's Position Paper). All the requirements of Act No. 3135, as amended, re extra-judicial sale of mortgage were ostensibly complied with by respondent. Hence, finally, title was transferred to him, and on June 20, 1979, respondent sold the involved property to Trinidad Ylanan for P12,000.00.

When informed of the above by one Salud Australlado on the first week of March 1979 (see Sworn Statement of complainant Narciso Melendres, p. 6, Folder No. 2 of case), and not having known the legal implications of the provisions of the second Real Estate Mortgage which they had executed, complainants could not believe that title to their lot had already been transferred to respondent and that respondent had already sold the same to a third person.

Upon learning of the sale in March, 1979, complainants tried to raise the amount of P10,000.00 and went to respondent's house on May 30, 1979 to pay their obligation, hoping that they could redeem their property, although three years had already lapsed from the date of the mortgage.

Respondent did not accept the proffered P10,000.00, but instead gave complainants a sheet of paper (Annex B, Complainants' Position Paper), which indicated that the total indebtedness had soared to P20,400.00. The computation was made in respondent's own handwriting. Complainants went home with shattered hopes and with grief in their hearts. Hence, the instant complaint for disbarment against respondent filed on October 5, 1979.

Respondent DENIES all the allegations of complainants. He maintains that what appears on the two documents allegedly executed by complainants, i.e., that they obtained a loan of P5,000.00 on August 5, 1975 and another P10,000.00 on May 7, 1976, is allegedly the truth, and claims that he in truth delivered the alleged amount of P5,000.00 to complainants and not P4,000.00. With respect to the second loan, respondent claims that he delivered to complainants P8,000.00, plus the P2,000.00 loan previously extended [to] complainants [by] one Regino Villanueva, which loan had been indorsed to respondent for collection, thus making a total of P10,000.00, as appearing on said document. Respondent denies that he exacted usurious interest of 10% a month or P500.00 from complainants. He asserts that the fact that complainants were able to secure a loan from the Insular Bank of Asia and America (IBAA) only proves the truth of his allegation that the title of the property, at the time complainants obtained a loan from IBAA on April 1976, was clear of any encumbrance, since complainants had already paid the original loan of P5,000.00 obtained from respondent; that complainants knew fully well all the conditions of said mortgage; and that his acquisition of the property in

question was in accordance with their contract and the law on the matter. Thus, he denies that he has violated any right of the complainants.

After weighing the evidence of both complainants and respondent, we find against respondent.

While complainants are correct in their claim that they actually obtained an actual cash of P4,000.00, they are only partly correct in the claim that out of the P10,000.00 appearing in the second Real Estate Mortgage, P6,000.00 was applied to interest considering that not all the P6,000.00 but only P4,000.00 was applied to interest, computed as follows: the first loan of P5,000.00 was supposedly due on August 31, 1975. Complainants paid 10% monthly interest or P500.00 on September 30, 1975, October 31, 1975 and November 30, 1975. Consequently, beginning December 31, 1975 up to May 31, 1976 (the date of the execution of the second Real Estate Mortgage) a total of six (6) months lapsed. Six (6) months at P500.00 equals P3,000.00, which amount plus the P2,000.00 complainants' loan to one Engr. Villanueva (indorsed to respondent for collection) totals P5,000.00. Adding this amount to the previous P5,000.00 indicated loan secured by the first mortgage results in P10,000.00, the amount appearing in the second Real Estate Mortgage.

Section 7. Rule 130 of the Rules of Court provides:

'SEC. 7. Evidence of written agreements. -- When the terms of an agreement have been reduced to writing, it is to be considered as containing all such terms, and, therefore, there can be, as between the parties and their successors in interest, no evidence of the terms of the agreement other than the contents of the writing, except in the following cases:

- (a) Where a mistake or imperfection of the writing, or its failure to express the true intent and agreement of the parties, or the validity of the agreement is put in issue by the pleadings;
- (b) Where there is an intrinsic ambiguity in the writing.

The term "agreement" includes wills.'

There is no dispute that the two documents denominated Real Estate Mortgages covering the supposed original loan of P5,000.00 and the inflated P10,000.00, respectively, were voluntarily signed by the complainants. The general rule is that when the parties have reduced their agreement to writing, it is presumed that they have made the writing the only repository and memorial of the truth, and whatever is not found in the writing must be understood to have been waived and abandoned.

However, the rule is not absolute as it admits of some exceptions, as aforequoted. One of the exceptions, that is, failure to express the true intent and agreement of the parties, applies in this case. From the facts obtaining in the case, it is clear that the complainants were induced to sign the Real Estate Mortgage documents by the false and fraudulent representations of respondent that each of the successive documents was a mere formality.

While it may be true that complainants are not at all illiterate, respondent, being a lawyer, should have at least explained to complainants the legal implications of the provisions of the real estate mortgage, particularly the provision appointing him as the complainants' attorney-in-fact in the event of default in payments on the part of complainants. While it may be conceded that it is presumed that in practice the notary public apprises complainants of the legal implications of the contract, it is of common knowledge that most notaries public do not go through the desired practice. Respondent at least could have informed the complainants by sending a demand letter to them to pay their obligation as otherwise he would proceed to sell the lot at public auction as per their contract. This respondent failed to do, despite the fact that he knew fully well that complainants were trying their best to raise money to be able to pay their obligation to him, as shown by the loan obtained by complainants from the IBAA on April 8, 1976. In this connection, it may be stated that complainants, per advice of respondent himself, returned the proceeds of the IBAA loan to the bank immediately on April 30, 1976, considering that the net proceeds of the loan from said bank was only P4,300.00 and not enough to pay

the indicated loan from respondent of P5,000.00, which per computation of respondent would already have earned interest of P2,500.00 for five (5) months (December 1975 to April, 1976).

Respondent claims that complainants had paid him the original loan of P5,000.00, and that this was the reason why complainants were able to mortgage the lot to the bank free from any encumbrance. This claim is incorrect. The reason why the title (T-2684) was free from any encumbrance was simply because of the fact that the first Real Estate Mortgage for the indicated loan of P5,000.00 (the actual amount was only P4,000.00) had not been annotated at the back of the title (see Annex B, p. 14, rec.).

Respondent also denies that complainants offered to him the amount of P10,000.00 as payment of the loan, alleging that if the offer were true, he could have readily accepted the same since he sold the lot for almost the same amount, for only P12,000.00, a difference of a few thousand pesos. Respondent's denial is specious.

Indeed, complainants made the offer, but respondent refused the same for the simple reason that the offer was made on May 30, 1979, three (3) years after the execution of the mortgage on May 31, 1976. With this lapse of time, respondent demanded obviously the payment of the accumulated substantial interest for three years, as shown by his own computation in his own handwriting on a sheet of paper (Annex C, Complainants' Position Paper, Folder No. 2).

In view of all the foregoing, the observation made by the Hearing Officer is worth quoting:

'In the humble opinion of the undersigned the pivotal question with respect to this particular charge is whose version is to be believed. Is it the version of the complainants or the version of the respondent.

In resolving this issue the possible motive on the part of the complainants in filing the present complaint against the respondent must be carefully examined and considered. At the beginning there was a harmonious relationship between the complainants and the respondent so much so that respondent was even engaged as counsel of the complainants and it is but human nature that when respondent extended a loan to the complainants the latter would be grateful to the former. However, in the case at bar, complainants filed a complaint against the respondent in spite of the great disparity between the status of the complainants and the respondent. Admittedly, respondent is in a better position financially, socially and intellectually. To the mind of the undersigned, complainants were only compelled to file the above-entitled complaint against the respondent because they felt that they are so aggrieved of what the respondent has done to them. It is for this reason therefore that the undersigned is inclined to believe the version of the complainants rather than of the respondent. In addition thereto, the respondent as a lawyer could really see to it that the transaction between the complainants and himself on papers appear legal and in order. Besides, there is ample evidence in the records of this case that respondent is actually engaged in lending money at least in a limited way and that the interest at the rate of ten per cent a month is but common among money lenders during the time of the transactions in question.'

Going now into the second charge, complainants alleged that respondent, who was their counsel (private prosecutor) in Criminal Case No. 734, for estafa, against accused Reynaldo Pineda, compromised the case with the accused without their consent and received the amount of P500.00 as advance payment for the amicable settlement, without however, giving to the complainants the said amount nor informing them of said settlement and payment.

Again, respondent denies the allegation and claims that the amicable settlement was with the consent of complainant wife Erlinda Dalman Melendre(z).

We are inclined to believe the version of the complainants.

It is admitted that complainants were not interested in putting the accused Reynaldo Pineda to jail but rather in merely recovering their money of P2,000.00. At this stage, relationship between complainants and respondent

was not yet strained, and respondent, as counsel of the complainants in this case, knew that complainants were merely interested in said recovery. Knowing this, respondent on his own volition talked to accused and tried to settle the case amicably for P2,000.00. He accepted the amount of P500.00 as advance payment, being then the only amount carried by the accused Pineda. A receipt was signed by both respondent and accused Pineda (Annex M, p. 34, record). However, respondent did not inform complainants about this advance payment, perhaps because he was still waiting for the completion of the payment of P2,000.00 before turning over the whole amount to complainants.

At any rate, complainants saw accused Pineda give the above-mentioned P500.00 to respondent, but they were ashamed then to ask directly of respondent what the money was all about.

On June 27, 1979, barely a month after May 30, 1979, when the complainants had already lost their trust and respect and/or confidence in respondent upon knowing what happened to their lot and, more so, upon respondent's refusal to accept the P10,000.00 offered by complainants to redeem the same, Narciso Melendre[z] saw the accused Pineda on his way home and confronted him on the P500.00 that had been given to respondent. Accused then showed complainant Melendres the receipt (Annex M, id.) showing that the P500.00 was an advance payment for the supposed settlement/dismissal of the case filed by complainants against him.

Sensing or feeling that respondent was fooling them, complainants then filed a motion before the court which was trying the criminal case and relieved respondent as their counsel.

The Investigating Fiscal, who heard the case and saw the demeanor of the witnesses in testifying, had this to say:

'With respect to the second charge, the fact that respondent received P500.00 from Reynaldo Pineda is duly established. Both the complainants and the respondent agreed that the said amount was given to the respondent in connection with a criminal case wherein the complainants were the private offended parties: that Reynaldo Pineda is the accused and that the respondent is the private prosecutor of the said case. The pivotal issue in this particular charge is whether the respondent received the amount of P500.00 from Reynaldo Pineda as an advance payment of an amicable settlement entered into by the complainants and the accused or the respondent received said amount from the accused without the knowledge and consent of the complainants. If it is true as alleged by the respondent that he only received it for and in behalf of the complainants as advance payment of an amicable settlement why is it that the same was questioned by the complainants? Why is it that it was not the complainants who signed the receipt for the said amount? How come that as soon as complainants know that the said amount was given to the respondent, the former filed a motion in court to relieve respondent as their counsel on the ground that they have lost faith and confidence on him? If it is really true that complainants have knowledge and have consented to this amicable settlement they should be grateful to the efforts of their private prosecutor, yet the fact is that they resented the same and went to the extent of disqualifying the respondent as their private prosecutor. Reynaldo Pineda himself executed an affidavit belying the claim of the respondent.'

Clearly, the complained acts as described and levelled against respondent Decena are contrary to justice, honesty, modesty, or good morals for which he may be suspended. The moral turpitude for which an attorney may be disbarred may consist of misconduct in either his professional or non-professional attitude (*Royong v. Oblena*, 7 SCRA 859). The complained acts of respondent imply something immoral in themselves, regardless of the fact whether they are punishable by law. The doing of the act itself, and not its prohibition by statute, fixes the moral turpitude. (*Bartos vs. U.S. Dist. Court for District of Nebraska* [C.C.C. Neb] 19F [2d] 722).

A parting comment.

All the above is not to say that complainants themselves are faultless.

Complainants should likewise be blamed for trusting the respondent too much. They did not bother to keep a copy of the documents they executed and considering that they admitted they did not understand the contents of the documents, they did not bother to have them explained by another lawyer or by any knowledgeable person in their locality. Likewise, for a period of three years, they did not bother to ask for respondent the status of their lot and/or their obligation to him. Their complacency or apathy amounting almost to negligence contributed to the expedient loss of their property thru the legal maneuvers employed by respondent. Hence, respondent's liability merits mitigation." (Underscoring supplied)

and made the following recommendation:

"WHEREFORE, it is respectfully recommended that Atty. Reynerio I. Decena be suspended from the practice of law for a period of five (5) years."[3]

The Office of the Solicitor General, through Fiscals Almonte and Jamero, held several hearings during the investigation of the present administrative case: City Fiscal Jorge T. Almonte was able to hold six (6) actual hearings out of twenty-five (25) resettings[4] while only five (5) actual hearings, out of forty (40) resettings,[5] were held under Provincial Fiscal Pedro S. Jamero. In those hearings, the complainants presented a number of witnesses who, after their direct testimony, were cross-examined by the counsel for respondent: complainant Narciso Melendrez also testified and was accordingly cross-examined. Considering the long delay incurred in the investigation of the administrative case and having been pressed by the Solicitor General immediately to complete the investigation, Fiscal Jamero proposed a change of procedure, from trial-type proceedings to requiring the parties to submit their respective position papers. The complainants immediately filed their position paper which consisted of their separate sworn statements, (that of Narciso Melendrez was in a question and answer form), their documentary exhibits and an affidavit of one George G. Santos. Respondent also filed his counter-affidavit and affidavits of his witnesses, with several annexes in support thereof. In the hearing of 28 October 1987, which had been set for the cross-examination of the complainants and their witnesses by respondent, the complainants refused to submit themselves to cross-examination on the ground that the order of the hearing officer dated 17 December 1986 declaring respondent's right of cross examination as having been waived, had become final and executory. Respondent questions now the evidentiary value of the complainants' position paper, not having passed through any cross-examination and argues that the non-submission of the complainants and their witnesses to cross-examination constitutes a denial of his right to due process.

We do not think respondent's right to confront the complainants and their witnesses against him has been violated. Respondent in fact cross-examined complainant Narciso Melendrez and some of the witnesses which complainants had presented earlier. As pointed out by the Solicitor General, the record of the proceedings shows that respondent had all the opportunity to cross-examine the other witnesses of the complainants (those whose affidavits were attached to complainants' position paper) had he wanted to, but had forfeited such opportunity by asking for numerous continuances which indicated a clear attempt on his part to delay the investigation proceedings. Respondent had in fact requested a total of twenty three (23) resettings during the investigation proceedings: he had eight (8) under Fiscal Almonte and fifteen (15) under Fiscal Jamero. There were also instances where respondent asked for postponement and at the same time reset the hearing to a specific date of his choice on which neither he nor his counsel would appear. That attitude of respondent eventually led the hearing officer to declare his (respondent's) right to cross-examine the complainants and their witnesses as having been waived in his order of 17 December 1986. Respondent can not now claim that he had been deprived below of the opportunity to confront the complainants and their witnesses.

After carefully going through the record of the proceedings as well as the evidence presented by both parties, we agree with the findings and conclusions of the Solicitor General.

The following acts of respondent:

1. making it appear on the 5 August 1975 real estate mortgage that the amount loaned to complainants was P5,000.00 instead of P4,000.00;
2. exacting grossly unreasonable and usurious interest;
3. making it appear in the second real estate mortgage of 7 May 1976 that the loan extended to complainants had escalated to P10,000.00;
4. failing to inform complainants of the import of the real mortgage documents and inducing them to sign those documents with assurances that they were merely for purposes of "formality";
5. failing to demand or refraining from demanding payment from complainants before effecting extrajudicial foreclosure of the mortgaged property; and
6. failing to inform or refraining from informing complainants that the real estate mortgage had already been foreclosed and that complainants had a right to redeem the foreclosed property within a certain period of time

constitute deception and dishonesty and conduct unbecoming a member of the Bar. We agree with the Solicitor General that the acts of respondent "imply something immoral in themselves regardless of whether they are punishable by law" and that these acts constitute moral turpitude, being "contrary to justice, honesty, modesty or good morals". The standard required from members of the Bar is not, of course, satisfied by conduct which merely avoids collision with our criminal law. Even so, respondent's conduct, in fact, may be penalizable under at least one penal statute - the anti-usury law.

The second charge against respondent relates to acts done in his professional capacity, that is, done at a time when he was counsel for the complainants in a criminal case for estafa against accused Reynaldo Pineda. There are two (2) aspects to this charge: the first is that respondent Decena effected a compromise agreement concerning the civil liability of accused Reynaldo Pineda without the consent and approval of the complainants: the second is that, having received the amount of P500.00 as an advance payment on this "settlement," he failed to inform complainants of that advance payment and moreover, did not turn over the P500.00 to the complainants. The facts show that respondent "settled" the estafa case amicably for P2,000.00 without the knowledge and consent of complainants. Respondent informed complainants of the amicable "settlement" and of the P500.00 advance payment only after petitioner Narciso Melendrez had confronted him about these matters. And respondent never did turn over to complainants the P500.00. Respondent is presumed to be aware of the rule that lawyers cannot "without special authority, compromise their clients' litigation or receive anything in discharge of a client's claim, but the full amount in cash."^[6] Respondent's failure to turn over to complainants the amount given by accused Pineda as partial "settlement" of the estafa case underscores his lack of honesty and candor in dealing with his clients.

Generally, a lawyer should not be suspended or disbarred for misconduct committed in his personal or non-professional capacity. Where, however, misconduct outside his professional dealings becomes so patent and so gross as to demonstrate moral unfitness to remain in the legal profession, the Court must suspend or strike out the lawyer's name from the Roll of Attorneys.^[7] The nature of the office of an attorney at law requires that he shall be a person of good moral character. This qualification is not only a condition precedent to admission to the practice of law; its continued possession is also essential for remaining in the practice of law, in the exercise of privileges of members of the Bar. Gross misconduct on the part of a lawyer, although not related to the discharge of professional duties as a member of the Bar, which puts his moral character in serious doubt, renders him unfit to continue in the practice of law.^[8]

In the instant case, the exploitative deception exercised by respondent attorney upon the complainants in his private transactions with them, and the exacting of unconscionable rates of interest, considered together with the acts of professional misconduct committed by respondent attorney, compel this Court to the Conviction that he has lost that good moral character which is indispensable for continued membership in the Bar.

WHEREFORE, respondent Reynerio I. Decena is hereby DISBARRED and his name shall be stricken from the Roll of Attorneys. Let a copy of this Resolution be FURNISHED each to the Bar Confidant and spread on the personal records of respondent attorney, and to the Integrated Bar of the Philippines.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

[1] The complaint was originally filed on 29 August 1979 with the Integrated Bar of the Philippines (Zamboanga del Sur Chapter) and was referred to this Court on 17 November 1979.

[2] Rollo, p. 94; Report and Recommendation, pp. 42-59.

[3] Id., pp. 52-53.

[4] December 22, 1980; January 9, 1981; January 24, 1981; February 7, 1981; February 21, 1981; February 28, 1981; March 7, 1981; March 26 & 27, 1981; April 9 & 10, 1981; April 27 & 28, 1981; May 12, 1981; May 13, 1981; July 2, 1981; July 3, 1981; August 17 & 19, 1981; October 5 & 8, 1981; October 7 to 8, 1981; November 23 to 26, 1981; February 22 to 26, 1982; February 22, 1982; February 23, 1982; February 24, 1982; April 29 & 30, 1982; June 10 to 11, 1982; and June 28 to 29, 1982 (Total - 25).

[5] June 15, 1983; November, 1983; December 12, 1983; February 24, 1984; March 1, 1984; April 17, 1984; May 9 & 16, 1984; June 20 to 21, 1984; July 16, 1984; September 5, 1984; October 3, 1984; October 22, 1984; December 27, 1984; February 18, 1985; March 13, 1985; April 29, 1985; May 9, 1985; May 28 to 29, 1985; July 17, 1985, September 27, 1985; October 10, 1985; November 13, 1985; January 27, 1986; February 20, 1986; October 16, 1986; November 7, 1986; November 11, 1986; December 17, 1986; December 24, 1986; January 9, 1987; February 26, 1987; March 26, 1987; April 24, 1987; May 18, 1987; June 8, 1987; October 16, 1987; October 21, 1987; October 26, 1987; and October 28, 1987 (Total - 40).

[6] Section 23, Rule 138 of the Revised Rules of Court.

[7] *Manolo v. Gan*, 93 Phil. 202 (1953).

[8] *Caballero v. Deipairan*, 60 SCRA 136 (1974); *Balinon v. De Leon*, 94 Phil. 277, (1954).

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