SOCIAL SECURITY SYSTEM, PETITIONER, VS. DEPARTMENT OF JUSTICE, JOSE V. MARTEL, OLGA S. MARTEL, AND SYSTEMS AND ENCODING CORPORATION, RESPONDENTS.

G.R. NO. 158131. August 08, 2007

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review[1] filed by the Social Security System (petitioner) of the Decision[2] dated 17 October 2002 and Resolution dated 5 May 2003 of the Court of Appeals. The Decision of 17 October 2002 affirmed the ruling of the Department of Justice (DOJ) dismissing petitioner's complaint against respondents Jose V. Martel, Olga S. Martel and five other individuals[3] for violation of Section 22(a) and (b) in relation to Section 28(e) of Republic Act No. 1161 (RA 1161),[4] as amended by Republic Act No. 8282 (RA 8282),[5] for non-remittance of contributions to petitioner. The 5 May 2003 Resolution denied petitioner's motion for reconsideration.

The Facts

Respondents Jose V. Martel and Olga S. Martel (respondent Martels) are directors of respondent Systems and Encoding Corporation (SENCOR), an information technology firm, with respondent Jose V. Martel serving as Chairman of the Board of Directors. Petitioner is a government-owned and controlled corporation mandated by its charter, RA 1161, to provide financial benefits to private sector employees. SENCOR is covered by RA 1161, as amended by RA 8282, Section 22 of which requires employers like SENCOR to remit monthly contributions to petitioner representing the share of the employer and its employees.

In 1998, petitioner filed with the Pasay City Prosecutor's Office a complaint against respondent Martels and their five co-accused (docketed as I.S. No. 98-L-1534) for SENCOR's non-payment of contributions amounting to P6,936,435.80 covering the period January 1991 to May 1997. To pay this amount, respondent Martels offered to assign to petitioner a parcel of land in Tagaytay City covered by Transfer Certificate of Title No. 26340 issued under respondent Martels' name. Petitioner accepted the offer "subject to the condition that x x x [respondent Martels] will x x x settle their obligation either by way of dacion en pago or through cash settlement within a reasonable time x x x."[6] Thus, petitioner withdrew its complaint from the Pasay City Prosecutor's Office but reserved its right to revive the same "in the event that no settlement is arrived at." Accordingly, the Pasay City Prosecutor's Office dismissed I.S. No. 98-L-1534.

In December 2001, respondent Jose V. Martel wrote petitioner offering, in lieu of the Tagaytay City property, computer-related services. The record does not disclose petitioner's response to this new offer but on 7 December 2001, petitioner filed with the Pasay City Prosecutor's Office another complaint against respondent Martels and their five co-accused (docketed as I.S. No. 00-L-7142) for SENCOR's non-remittance of contributions, this time from February 1991 to October 2000 amounting to P21,148,258.30.

In their counter-affidavit, respondent Martels and their co-accused alleged that petitioner is estopped from holding them criminally liable since petitioner had accepted their offer to assign the Tagaytay City property as payment of SENCOR's liability. Thus, according to the accused, the relationship between SENCOR and petitioner was "converted" into an ordinary debtor-creditor relationship through novation.

The Ruling of the Pasay City Prosecutor's Office

In the Resolution of 28 February 2001, Pasay City Assistant Prosecutor Artemio Puti (Prosecutor Puti) found probable cause to indict respondent Martels for violation of Section 22(a) and (b) in relation to Section 28(e) of RA 1161, as amended by RA 8282.[7] Prosecutor Puti rejected respondent Martels' claim of "negation" of criminal liability by novation, holding that (1) SENCOR's criminal liability was already "consummated" before respondent Martels offered to pay SENCOR's liability and (2) the dacion en pago involving the Tagaytay City property did not materialize. Prosecutor Puti noted that respondent Martels did not dispute petitioner's claim on SENCOR's non-remittance of contributions.[8] Accordingly, the Pasay City Prosecutor's Office filed with the Regional Trial Court of Pasay City the corresponding Information against respondent Martels, docketed as Criminal Case No. 01-0517.

Respondent Martels appealed to the DOJ.

The Ruling of the Department of Justice

In the Resolution dated 18 May 2001 signed by DOJ Undersecretary Manuel A.J. Teehankee, the DOJ granted respondent Martels' appeal, set aside Prosecutor Puti's Resolution of 28 February 2001, and ordered the withdrawal of the Information filed in Criminal Case No. 01-0517. The DOJ found that respondent Martels and petitioner entered into a compromise agreement before the filing of the Information in Criminal Case No. 01-0517 and that such "negated" any criminal liability on respondent Martels' part. The DOJ Resolution pertinently reads:

> From the facts obtaining, it cannot be denied that the dismissal of the first complaint docketed as I.S. No. 98-L-1534 constituted the compromise agreement between the parties whereby complainant SSS agreed to respondents' mode of settling their liability through a "dacion en pago". Consequently, the original relation between the parties was converted to that of an ordinary creditor-debtor relationship thereby extinguishing the original obligation by a new one. Complainant, therefore, cannot insist on the original trust it had with respondents existing prior to the dismissal of the former complaint (I.S. No. 98-L-1534) by filling [sic] the present complaint (I.S. No. 00-L-7142 now subject of this appeal). Incidentally, this Office considers the latter complaint as a mere refilling [sic] of the former already compromised and dismissed [complaint], because of the similarity of the parties and causes of action.
>
> After the dismissal of the complaint in I.S. No. 98-L-1534 and prior to the filing of the complaint at bar docketed as 00-L-7142, respondents have exerted great effort towards complying with the terms and conditions of the compromise by way of "dacion en pago". For example, respondents cite their arrangement for ocular inspection of the Tagaytay land by the Presidential Commission on Tagaytay-Taal and with the Municipal Engineer of Laurel, Batangas. The approval of the said commission to build a 12-storey building had been complied with. This is not disputed by complainant. Access roads were acquired by respondents from adjacent owners, ready to be titled in complainant's name. Papers and permits like ecological impact certification, site resurvey, soil test and site appraisal were secured from various offices like the Municipality of Laurel, the Municipal Engineer, the Presidential Commission on Tagaytay-Taal, the Philippine Volcanology Commission, the Bureau of Lands and the Department of Agriculture, among others.
>
> On the part of complainant, it equally shows [sic] adherence to the agreement to compromise. Records show that on October 1999, one of its officers, Atty. Mariano Pablo S. Tolentino, assistant vice-president, had expressed in writing his finding to the effect that "(they) are satisfied to see the lot that (respondents) have

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> negotiated with Congressman Dumpit that (respondents) offered as access road to (respondents[']) property" (Annex "8" of Petition for Review). And, as borne by the records, a Dacion En Pago Committee had been created by complainant SSS precisely to set the mechanism of the settlement in motion. Further, respondents proposed an alternative mode of settlement through computer-related services, which proposal was submitted to complainant as late as December 1, 2000.
>
> Verily, the foregoing facts indelibly show that the parties had acted with an obvious intention to compromise. Hence, respondents' reliance on the doctrine of incipient criminal liability had [sic] factual and legal bases. While the rule provides that novation does not extinguish criminal liability, this rule, however holds true only if a criminal information is already filed in court. Before that bench mark point, the criminal liability is only at its incipient stage and the new relation between the parties forged at such stage had the effect of negating the criminal liability of the offender (People vs. Galsim, People vs. Trinidad, 53 OG 731). x x x x
>
> In fine, the compromise agreement between the parties whereby respondents' obligation will be settled through a "dacion en pago" and the dismissal of the complaint in I.S. No. 98-L-1534 has [sic] all the earmarks of novation negating respondents' criminal liability. Ergo, complainant is precluded from filing the present criminal complaint against respondents.[9]

Petitioner sought reconsideration but the DOJ denied its motion in the Resolution of 20 September 2001.

Petitioner appealed to the Court of Appeals in a petition for certiorari.

The Ruling of the Court of Appeals

In its Decision of 17 October 2002, the Court of Appeals affirmed the DOJ's rulings and dismissed petitioner's petition. The appellate court deferred to the DOJ's power to review rulings of prosecutors and held that in reversing Prosecutor Puti's findings, the DOJ did not act with grave abuse of discretion.[10]

Petitioner sought reconsideration but the appellate court denied its motion in the Resolution of 5 May 2003.

Hence, this petition. Petitioner contends that the Court of Appeals erred in affirming the DOJ's rulings because (1) respondent Martels were charged not with Estafa but with violation of Section 22(a) and (b) in relation to Section 28(e) of RA 1161, as amended, a special law impressed with public interest; (2) petitioner did not agree to settle respondent Martels' criminal liability; and (3) novation serves only to negate civil, but not criminal, liability.

In their Comment, respondent Martels countered that the DOJ correctly applied the concept of novation as they had settled SENCOR's liability. Respondent Martels added that as of the filing of their Comment, they had already paid P17,887,442.54 of SENCOR's liability.

In its Reply, petitioner contended that although respondent Martels attempted to pay SENCOR's overdue contributions through dacion en pago, no payment took place, as evidenced by respondent Martels' alternative offer to provide computer related services to petitioner instead of assigning the Tagaytay City realty. On respondent Martels' partial payment of SENCOR's liability, petitioner contended that such does not preclude the resolution of this petition.

The Issue

The issue is whether the concept of novation serves to abate the prosecution of respondent Martels for violation of Section 22(a) and (b) in relation to Section 28(e) of RA 1161, as amended.

The Ruling of the Court

We rule in the negative and accordingly grant the petition.

The Concept of Novation Finds No Application Here

Novation, a civil law concept relating to the modification of obligations,[11] takes place when the parties to an existing contract execute a new contract which either changes the object or principal condition of the original contract, substitutes the person of the debtor, or subrogates a third person in the rights of the creditor.[12] The effect is either to modify or extinguish the original contract. In its extinctive form, the new obligation replaces the original, extinguishing the obligor's obligations under the old contract.[13]

This Court first recognized the possibility of applying the concept of novation to criminal cases in People v. Nery,[14] involving a case for Estafa. In that case, the Court observed that although novation is not one of the means recognized by the Revised Penal Code to extinguish criminal liability,[15] it may "prevent the rise of criminal liability or to cast doubt on the true nature of the original basic transaction," provided the novation takes place before the filing of the Information with the trial court. We held:

> The novation theory may perhaps apply prior to the filing of the criminal information in court by the state prosecutors because up to that time the original trust relation may be converted by the parties into an ordinary creditor-debtor situation, thereby placing the complainant in estoppel to insist on the original trust. But after the justice authorities have taken cognizance of the crime and instituted action in court, the offended party may no longer divest the prosecution of its power to exact the criminal liability, as distinguished from the civil. The crime being an offense against the state, only the latter can renounce it x x x.
>
> It may be observed in this regard that novation is not one of the means recognized by the Penal Code whereby criminal liability can be extinguished; hence, the role of novation may only be to either prevent the rise of criminal liability or to cast doubt on the true nature of the original basic transaction, whether or not it was such that its breach would not give rise to penal responsibility, as when money loaned is made to appear as a deposit, or other similar disguise is resorted to x x x.[16] (Emphasis supplied)

Thus, novation has been invoked to reverse convictions in cases where an underlying contract initially defined the relation of the parties such as the contract in sale on commission in Estafa cases[17] or the contract in sale of goods in cases of violation of the Trust Receipts Law.[18] Further, the party invoking novation must prove that the new contract did indeed take effect.[19]

The facts of this case negate the application of novation. In the first place, there is, between SENCOR and petitioner, no original contract that can be replaced by a new contract changing the object or principal condition of the original contract, substituting the person of the debtor, or subrogating a third person in the rights of the creditor. The original relationship between SENCOR and petitioner is defined by law - RA 1161, as amended - which requires employers like SENCOR to make periodic contributions to petitioner under pain of criminal prosecution. Unless Congress enacts a law further amending RA 1161 to give employers a chance to settle their overdue contributions to prevent prosecution, no amount of agreements between petitioner and SENCOR (represented by respondent Martels) can change the nature of their relationship and the consequence of SENCOR's non-payment of contributions.

The indispensability of a prior contractual relation between the complainant and the accused as requisite for the application of novation in criminal cases was underscored in People v. Tanjutco.[20] In that case, the accused, who was charged with Qualified Theft, invoked People v. Nery to support his claim that the complainant's acceptance of partial payment of the stolen funds before the filing of the Information with the trial court converted his liability into a civil obligation thus rendering baseless his prosecution. The Court rejected this claim and held that unlike in Nery, there was, in that case, no prior "contractual relationship or bilateral agreement, which can be modified or altered by the parties," thus:

> Reliance on the aforecited Nery case, in support of the contention that the acceptance by complainant of payment converted the liability of the accused-appellant into a civil obligation or else that it estopped said complainant from proceeding with the prosecution of the case, is misplaced and unwarranted.
>
> [I]n the Nery case, which is an action for estafa, there was contractual relationship between the parties that can be validly novated by the settlement of the obligation of the offender. Whatever was said in that case, therefore, cannot be invoked in the present case where no contractual relationship or bilateral agreement, which can be modified or altered by the parties, is involved. There is here merely a taking of the complainant's property by one who never acquired juridical possession thereof, qualified by grave abuse of confidence.[21] (Italicization in the original; boldfacing and underscoring supplied)

Similarly, there is here merely an employer's failure to pay its contributions to a government corporation as mandated by that corporation's charter.

Secondly, as Prosecutor Puti correctly noted, the agreement between petitioner and respondent Martels for the latter to pay SENCOR's overdue contributions through the assignment to petitioner of a piece of realty never materialized. Petitioner's acceptance of respondent Martels' offer was subject to a suspensive condition that "x x x [private] respondents will x x x settle their obligation either by way of dacion en pago or through cash settlement within a reasonable time x x x." This condition was not met because three years after respondent Martels' offer, petitioner did not receive any payment. In fact, respondent Jose Martel, at that point, changed the terms of the supposed settlement by offering computer-related services instead of assigning the Tagaytay City realty. In their Comment to the petition, respondent Martels explained that they made such alternative offer because "the processing of the papers for the Tagaytay property met with some delay."[22] In short, respondent Martels failed to make good on their promise in 1998 to settle SENCOR's liability through dacion en pago. The circumstances the DOJ cited as proof of the compromise agreement's alleged implementation were nothing but steps preparatory to the actual payment of SENCOR's overdue contributions.

In sum, we hold that any payment respondent Martels would have made to petitioner (and it appears that pending this petition, respondent Martels partially paid SENCOR's liability) only affects their civil, if any, but not their criminal liability for violation of Section 22(a) and (b) in relation to Section 28(e) of RA 1161, as amended. As noted in the Resolution dated 28 February 2001 of the Pasay City Prosecutor's Office, respondent Martels do not dispute SENCOR's non-remittance of contributions from February 1991 to October 2000. Thus, the existence of probable cause against respondent Martels, SENCOR's directors,[23] is beyond doubt.

Prosecutors' Findings Not Conclusive

In dismissing petitioner's petition, the Court of Appeals held:

> [T]his Court has no power to determine whether probable cause to warrant prosecution exist or not. x x x [T]he determination of whether or not probable cause exists to warrant the prosecution in court of [respondent Martels] should be consigned and entrusted to the Department of Justice as reviewer of the findings of the public prosecutor x x x.
>
> In this Petition, We are being asked to assume the function of Public Prosecutor by determining whether probable cause exists or not. Such is a function that this Court should not be called upon to perform x x x.[24]

This is a misstatement of the law. This Court and the Court of Appeals possess the power to review findings of prosecutors in preliminary investigations.[25] Although policy considerations call for the widest latitude of deference to the prosecutor's findings,[26] courts should never shirk from exercising their power, when the circumstances warrant, to determine whether the prosecutor's findings are supported by the facts, or as in this case, by the law. In so doing, courts do not act as prosecutors but as organs of the judiciary, exercising their

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mandate under the Constitution, relevant statutes, and remedial rules to settle cases and controversies. Indeed, the exercise of this Court's review power ensures that, on the one hand, probable criminals are prosecuted[27] and, on the other hand, the innocent are spared from baseless prosecution.[28]

WHEREFORE, we GRANT the petition. We SET ASIDE the Decision dated 17 October 2002 and Resolution dated 5 May 2003 of the Court of Appeals. We REINSTATE the Resolution dated 28 February 2001 of the Pasay City Prosecutor's Office.

SO ORDERED.

Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.
Quisumbing, (Chairperson), J., no part close relation to a party.

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[1]Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Jose L. Sabio, Jr. with Associate Justices Romeo A. Brawner and Mariano C. Del Castillo, concurring.

[3] Katrina Olga S. Martel, Ismael E. Maniangas, Jr., Idelfonso M. Medina, Edgardo B. Zaragoza, and Hernando B. Perez.

[4] The Social Security Act of 1954.

[5] These provisions read:

SEC. 22. Remittance of Contributions. - (a) The contribution imposed in the preceding section shall be remitted to the SSS within the first ten (10) days of each calendar month following the month for which they are applicable or within such time as the Commission may prescribe. Every employer required to deduct and to remit such contributions shall be liable for their payment and if any contribution is not paid to the SSS as herein prescribed, he shall pay besides the contribution a penalty thereon of three percent (3%) per month from the date the contribution falls due until paid. If deemed expedient and advisable by the Commission, the collection and remittance of contributions shall be made quarterly or semi-annually in advance, the contributions payable by the employees to be advanced by their respective employers: Provided, That upon separation of an employee, any contribution so paid in advance but not due shall be credited or refunded to his employer.

(b) The contributions payable under this Act in cases where an employer refuses or neglects to pay the same shall be collected by the SSS in the same manner as taxes are made collectible under the National Internal Revenue Code, as amended. Failure or refusal of the employer to pay or remit the contributions herein prescribed shall not prejudice the right of the covered employee to the benefits of the coverage.

The right to institute the necessary action against the employer may be commenced within twenty (20) years from the time the delinquency is known or the assessment is made by the SSS, or from the time the benefit accrues, as the case may be.

SEC. 28. Penal Clause. - x x x x

(e) Whoever fails or refuses to comply with the provisions of this Act or with the rules and regulations promulgated by the Commission, shall be punished by a fine of not less than Five thousand pesos (P5,000) nor more than Twenty thousand pesos (P20,000), or imprisonment for not less than six (6) years and one (1) day nor more than twelve (12) years or both, at the discretion of the court: Provided, That where the violation consists in failure or refusal to register employees or himself, in case of the covered self-employed, or to deduct contributions

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from the employees' compensation and remit the same to the SSS, the penalty shall be a fine of not less than Five thousand pesos (P5,000) nor more than Twenty thousand pesos (P20,000) and imprisonment for not less than six (6) years and one (1) day nor more than twelve (12) years.

[6] Rollo, p. 163.

[7] Prosecutor Puti dismissed the complaint against respondent Martels' co-accused for insufficiency of evidence.

[8] The Resolution of 28 February 2001 reads in pertinent parts (Rollo, pp. 31-32):

After a careful perusal of the evidence submitted by the contending parties, this office finds that the issue [in] the instant case is whether or not the Systems and Encoding Corporation (SENCOR) violated the provisions of Republic Act No. 1161 as amended by Republic Act [No.] 8282 otherwise known as the Social Security Act of 1997. The records show that SENCOR has failed to remit to SSS the SSS/Medicare/EC contribution covering the period from February 1991 to October 2000. This fact is not disputed by the parties and the amount involved is Twenty One Million One Hundred Forty Eight Thousand Two Hundred Fifty Eight Pesos and Thirty Centavos (P21,148,258.30). x x x

Emphasis is made that the above provisions of law speak of a special law x x x violation of which is malum prohibitum. Although the employer offered to settle its obligation though "dacion en pago" of valuable piece of real estate at Tagaytay City, yet said "dacion en pago" was never accepted by the SSS. There was an attempt to accept said offer but for failure of the employer (SENCOR) to comply with the conditions imposed by the SSS, said "dacion en pago" did not materialize and was never accepted.

The claim therefore, that said offer to settle the obligation through dacion en pago which was entertained by the SSS converted their relationship into an ordinary creditor/debtor situation[ ] is of no moment. The criminal liability of the employer was already consummated before the employer offered to settle its obligations to the SSS through dacion en pago. There was no express acceptance on the part of the SSS of the dacion en pago offered by the employer (SENCOR) even when the SSS moved for [the] dismissal of the earlier case filed against the employer. The intention of the parties was to revive the case once the offer was not accepted by the SSS. Hence, even if there was novation between them yet the novation did not extinguish [the] criminal liability of [the] employer (SENCOR) on the ground that the criminal liability incurred by SENCOR when it violated the SSS Law, was already consummated or committed. x x x x However, the fact remains that there was no novation as the offer made by the employer to settle its obligation through dacion en pago was never accepted by the SSS, hence, "the novation theory does not apply where the offer to pay by the debtor, and accepted by the creditor, turns out to be merely an empty promise" (Diongson vs. Court of Appeals, 321 SCRA 477). It will be remembered that the act of the employer (SENCOR) of offering dacion en pago and other services was merely a ploy to frustrate prosecution of the offense against them. It has been three (3) years and the employer has yet to make good its offer.

[9] Rollo, pp. 40-41.

[10] The Decision of 17 October 2002 reads in pertinent parts (Rollo, pp. 152-153):

The power of review over Resolutions issued by Prosecutors granted to the Secretary of Justice cannot be disputed[.] The last par. of Section 4 of Rule 112 of the Rules on Criminal Procedure clearly gives the Secretary of Justice the power to reverse or modify the resolution of the Provincial, City or Chief State Prosecutor. Under such circumstances and pursuant to said rule, the Secretary of Justice, in reversing the findings of the [Pasay] City Prosecutor was merely exercising a power expressly conferred by law and could not be said to have acted with grave abuse of discretion or without jurisdiction.

More importantly, this Court has no power to determine whether probable cause to warrant prosecution exist or not. x x x [T]he determination of whether or not probable cause exists to warrant the prosecution in court of [respondent Martels] should be consigned and entrusted to the Department of Justice as reviewer of the findings of the public prosecutor (Roberts vs. CA, 254 SCRA 307).

In this Petition, We are being asked to assume the function of Public Prosecutor by determining whether probable cause exists or not. Such is a function that this Court should not be called upon to perform (Cruz, Jr. vs. People, 233 SCRA 439).

Based on the aforecited clear and relevant jurisprudence, this instant Petition has lost its bearings and must necessarily fail.

[11] See Articles 1291-1304, Section 6, Chapter 4, Title I, Book IV of the Civil Code.

[12] Article 1291, Civil Code.

[13] Quinto v. People, 365 Phil. 259 (1999).

[14] No. L-19567, 5 February 1964, 10 SCRA 244.

[15] The grounds for extinction of criminal liability are enumerated in Articles 89 and 94 of the Revised Penal Code.

[16] People v. Nery, supra note 14 at 247.

[17] E.g., Quinto v. People, 365 Phil. 259 (1999); Mariano v. People, G.R. No. 80161, 14 December 1992, 216 SCRA 541; Ong v. Court of Appeals, 209 Phil. 475 (1983).

[18] E.g., Pilipinas Bank v. Ong, 435 Phil. 732 (2002).

[19] Diongzon v. Court of Appeals, 378 Phil. 1090 (1999).

[20] 131 Phil. 884 (1968).

[21] Id. at 897.

[22] Rollo, p. 181.

[23] Section 28(f) of RA 8282 provides: "If the act or omission penalized by this Act be committed by an association, partnership, corporation or any other institution, its managing head, directors or partners shall be liable to the penalties provided in this Act for the offense."

[24] Rollo, p. 152.

[25] After the Information is filed with the Regional Trial Court, it can also make its own determination, upon proper motion, whether probable cause exists to hold the accused for trial (see Ladlad v. Velasco, G.R. Nos. 172070-72, 1 June 2007; Principio v. Barrientos, G.R. No. 167025, 19 December 2005, 478 SCRA 639).

[26] See Acuña v. Deputy Ombudsman for Luzon, G.R. No. 144692, 31 January 2005, 450 SCRA 232.

[27] See NBI-Microsoft Corporation v. Hwang, G.R. No. 147043, 21 June 2005, 460 SCRA 428.

[28] See Ladlad v. Velasco, G.R. Nos. 172070-72, 1 June 2007.

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