

VITARICH CORPORATION, PETITIONER, VS. CHONA LOSIN, RESPONDENT.

G.R. No. 181560. November 15, 2010

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review under Rule 45 of the Rules of Court seeking to reverse and set aside the November 26, 2007 Decision[1] of the Court of Appeals, Cagayan de Oro (CA-CDO), in CA G.R. CV No.73726,[2] which reversed the August 9, 2001 Decision of the Regional Trial Court, Branch 23, General Santos City (RTC), in Civil Case No. 6287, in favor of petitioner Vitarich Corporation (Vitarich).

THE FACTS:

Respondent Chona Losin (Losin) was in the fastfood and catering services business named Glamours Chicken House, with address at Parang Road, Cotabato City. Since 1993, Vitarich, particularly its Davao Branch, had been her supplier of poultry meat.[3] In 1995, however, her account was transferred to the newly opened Vitarich branch in General Santos City.

In the months of July to November 1996, Losin's orders of dressed chicken and other meat products allegedly amounted to P921,083.10. During this said period, Losin's poultry meat needs for her business were serviced by Rodrigo Directo (Directo) and Allan Rosa (Rosa), both salesmen and authorized collectors of Vitarich, and Arnold Baybay (Baybay), a supervisor of said corporation. Unfortunately, it was also during the same period that her account started to experience problems because of the fact that Directo delivered stocks to her even without prior booking which is the customary process of doing business with her.[4]

On August 24, 1996, Directo's services were terminated by Vitarich without Losin's knowledge. He left without turning over some supporting invoices covering the orders of Losin. Rosa and Baybay, on the other hand, resigned on November 30, 1996 and December 30, 1996, respectively. Just like Directo, they did not also turn over pertinent invoices covering Losin's account.[5]

On February 12, 1997, demand letters were sent to Losin covering her alleged unpaid account amounting to P921,083.10. Because of said demands, she checked her records and discovered that she had an overpayment to Vitarich in the amount of P500,000.00. She relayed this fact to Vitarich and further informed the latter that checks were issued and the same were collected by Directo.[6]

It appears that Losin had issued three (3) checks amounting to P288,463.30 which were dishonored either for reasons - Drawn Against Insufficient Funds (DAIF) or Stop Payment.[7]

On March 2, 1998, Vitarich filed a complaint for Sum of Money against Losin, Directo, Rosa, and Baybay before the RTC.

On August 9, 2001, the RTC rendered its Decision[8] in favor of Vitarich, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of plaintiff, ordering defendant Chona Losin to pay plaintiff the following:

- P297,462.50 representing the three checks which had been stopped payment with interest at 12% per annum from the date of this Decision until the whole amount is fully paid;
- P101,450.20 representing the unpaid sales (Exhibits `L' and `M') with interest at 12% from date of this Decision until the whole amount is fully paid;
- P20,000.00 in concept of attorney's fees; and
- The cost of suit.

As to the complaint against defendant Allan Rosa and Arnold Baybay, the same is dismissed. The complaint against Rodrigo Directo still remains and is hereby ordered archived until he could be served with summons.

SO ORDERED.[9]

Not satisfied with the RTC decision, Losin appealed to the CA presenting the following:

ASSIGNMENT OF ERRORS:

- THE LOWER COURT ERRED IN NOT APPRECIATING THE OVERPAYMENT MADE BY DEFENDANT-APPELLANT TO VITARICH CORPORATION;
- THE LOWER COURT ERRED IN ORDERING THE PAYMENT OF THE THREE (3) CHECKS WITH STOP PAYMENT ORDERS AND WITHOUT ANY ANTECEDENT DOCUMENTARY EVIDENCES FOR THE TWO (2) CHECKS, NAMELY: RCBC CHECK NO. CX 046324 AND RCBC CHECK NO. CX 046327 ; AND
- THE LOWER COURT ERRED IN NOT FINDING VITARICH CORPORATION NEGLIGENT IN THE SELECTION OF ITS EMPLOYEES AND NEITHER FINDING THE CORPORATION LIABLE FOR DAMAGES A CLEAR VIOLATION OF ARTICLE 2180 OF THE CIVIL CODE.[10]

On November 26, 2007, the CA rendered the assailed decision in favor of Losin. Pertinently, the said decision reads:

It is axiomatic that we should not interfere with the judgment of the trial court in determining the credibility of witnesses, unless there appears in the record some fact or circumstances of weight and influence which has been overlooked or the significance of which has been misinterpreted. The reason is that the trial court is in a better position to determine questions involving credibility having heard the witnesses and having observed their deportment and manner of testifying during the trial unless there is showing that the findings of the lower court are totally devoid of support or glaringly erroneous as to constitute palpable error or grave abuse of discretion. This is such an instance.

By the contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter. Thus, the elements of agency are (i) consent, express or implied, of the parties to establish the relationship; (ii) the object is the execution of a juridical act in relation to a third person; (iii) the agent acts as a representative and not for himself; and (iv) the agent acts within the scope of his authority.

The Civil Code defines a contract of agency as follows:

"Art. 1868. By the contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter."

As far as Losin is concerned, Directo was a duly authorized agent of Vitarich Corporation. As such, it fell upon Directo to place her orders of dressed chicken and other related products to their General Santos City branch. All such orders were taken from the Vitarich bodega by Directo as testified by Alona Calinawan, then bookkeeper of Vitarich from March 1995 to September 1998, who was responsible for all the customers' accounts, receivables and withdrawals of dressed chicken from their bodega.

A perusal of the records would show that Vitarich included in their list of collectibles from Losin several amounts that were not supported by their Charge Sales Invoices such as P44,987.70, P3,300.00; P28,855.40; P98,166.20; P73,806.00; and P93,888.80 and which form part of their total claim of P912,083.10. Furthermore, Vitarich also submitted Charge Sales Invoices showing the amount of P70,000.00, P41,792.40, P104,137.40 and P158,522.80 as part of their exhibits but which amounts are not included in its summary statement of collectibles against Losin.

It is noted that the dressed chicken and other related products as manifested by the Charge Sales Invoices, were taken out of the bodega and received by Directo, who is now 'at large.' There was no evidence presented by Vitarich to prove that aforesaid stocks were delivered to Losin. Contrary to what Vitarich claimed that Directo resigned on August 24, 1996, exhibit 'X' shows that he was 'terminated.' The fact can not be put aside that Directo was the salesman and authorized collector and by law, the agent of Vitarich. Criminal acts committed by Directo by his non-remittance of the proceeds of the checks given by Losin, is his separate accountability with Vitarich and should not be imputed to their client, Losin. In fact, defendant Directo absconded when plaintiff-appellee started to question his 'collectibles.' The totality of Directo's acts clearly indicated a deliberate attempt to escape liability.

The Civil Code provides:

"Art. 1921. If the agency has been entrusted for the purpose of contracting with specified persons, its revocation shall not prejudice the latter if they were not given notice thereof."

"Art. 1922. If the agent had general powers, revocation of the agency does not prejudice third persons who acted in good faith and without knowledge of the revocation. Notice of the revocation in a newspaper of general circulation is a sufficient warning to third persons." (Emphasis Ours)

The reason for the law is obvious. Since the third persons have been made to believe by the principal that the agent is authorized to deal with them, they have the right to presume that the representation continues to exist in the absence of notification by the principal.

Nowhere in the records can it be found that Losin was notified of the fact that Directo was no longer representing the interest of Vitarich and that the latter has terminated Directo's services. There is also an absence of any proof to show that Directo's termination has been published in a newspaper of general circulation.

It is well settled that a question of fact is to be determined by the evidence offered to support the particular contention. In defendant-appellant's 'Statement of Payments Made to Vitarich,' prepared and signed by Losin's bookkeeper, Imelda S. Cinco, all the checks enumerated therein coincides with the bank statements submitted by RCBC, thus corroborating Losin's claim that she has paid Vitarich. Vitarich's contention that 'defendant Baybay tried very hard to hide his accountabilities to the plaintiff x x x but failed to explain why the account remained unpaid,' confirms its belief that their own agents as such, are accountable for transactions made with third persons. "As a Sales Supervisor, he is principally liable for the behavior of his subordinates (Directo & Rosa) and for the enforcement of company rules" which may have gone beyond their authority to do such acts.

Anent the third assigned error that the lower court erred in not finding Vitarich negligent in the selection of its employees thereby making the former liable for damages under Article 2180 of the Civil Code, We find the same

to be without basis as said article explicitly holds that:

"ART. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

Xxx xxx xxx

Xxx xxx xxx

Xxx xxx xxx

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

Xxx xxx xxx."

Pursuant to Article 2180 of the Civil Code, that vicarious liability attaches only to an employer when the tortuous conduct of the employee relates to, or is in the course of, his employment. The question to ask should be whether at the time of the damage or injury, the employee is engaged in the affairs or concerns of the employer or, independently, in that of his own? Vitarich incurred no liability when Directo's conduct, act or omission went beyond the range of his employment.

Section 1, Rule 133 of the Rules of Court provides:

"SECTION 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."

"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 the evidence' or greater weight of the credible evidence." It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.

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We reviewed the factual and legal issues of this case in light of the general rules of evidence and the burden of proof in civil cases, as explained by the Supreme Court in *Jison v. Court of Appeals*:

"xxx Simply put, he who alleges the affirmative of the issue has the burden of proof, and upon the plaintiff in a civil case, the burden of proof never parts. However, in the course of trial in a civil case, once plaintiff makes out a prima facie case in his favour, the duty or the burden of evidence shifts to defendant to controvert plaintiff's prima facie case, otherwise, a verdict must be returned in favour of plaintiff. Moreover, in civil cases, the party having the burden of proof must produce a preponderance of evidence thereon, with plaintiff having to rely on the strength of his own evidence and not upon the weakness of the defendants. The concept of 'preponderance of evidence' refers to evidence which is of greater weight, or more convincing, that which is offered in opposition to it; at bottom, it means probability of truth."

Hence, Vitarich who has the burden of proof must produce such quantum of evidence, with the former having to rely on the strength of its own evidence and not on the weakness of the defendant-appellant Losin's.

In this light, we have meticulously perused the records of this case and [found] that the court a quo had erred in appreciating the evidence presented.

In deciding this appeal, the Court relies on the rule that a party who has the burden of proof in a civil case must establish his cause of action by a preponderance of evidence. When the evidence of the parties is in equipoise, or when there is a doubt as to where the preponderance of evidence lies, the party with the burden of proof fails and the petition/complaint must thus be denied. We find that plaintiff-appellee Vitarich failed to prove that the goods were ever delivered and received by Losin, said charge sales invoices being undated and unsigned by Losin being the consignee of the goods.

On the other hand, Losin could not also prove that she has overpaid Vitarich. Hence, her contention that she has overpaid Vitarich and her prayer for refund of the alleged overpaid amount, must necessarily fail.

ACCORDINGLY, the instant appeal is hereby GRANTED and the appealed judgment is hereby SET ASIDE and VACATED. No pronouncement as to cost.

SO ORDERED.[11]

Hence, this petition for review alleging that---

AS THE FINDINGS OF FACTS OF THE COURT OF APPEALS SQUARELY CONTRADICTS THAT OF THE TRIAL COURT, PETITIONER HUMBLY REQUESTS THE SUPREME COURT TO INQUIRE INTO THE ERRONEOUS CONCLUSIONS OF FACTS MADE BY THE COURT OF APPEALS.[12]

As a general rule, a petition for review under Rule 45 of the Rules of Court covers questions of law only. Questions of fact are not reviewable and passed upon by this Court in its exercise of judicial review. The distinction between questions of law and questions of fact has been well defined. A question of law exists when the doubt or difference centers on what the law is on a certain state of facts. A question of fact, on the other hand, exists if the doubt centers on the truth or falsity of the alleged facts.[13]

The rule, however, admits of exceptions, namely: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[14]

The aforementioned exceptions, particularly the seventh exception, finds relevance in the case at bench since the findings of the CA are clearly in conflict with that of the trial court. For this reason, the Court is constrained to reevaluate the evidence adduced by both parties to resolve the issues which boil down to whether or not Losin is liable to Vitarich and, if so, to what extent.

The Court resolves the issues partly in favor of Vitarich.

Initially, Vitarich claims a total of P921,083.10 from respondent Losin, Directo, Rosa and Baybay (defendants in Civil Case No. 6287 for Sum of Money). According to Vitarich, "[t]he successive and sudden resignations of defendants Directo, Baybay and Rosa and the sudden change of mind of defendant Losin after previously acknowledging her accounts are part of an elaborate and sinister scheme of defendants, acting singly or

collectively, in conspiracy or not, in defrauding plaintiff corporation xxx."[15]

The RTC ruled in favor of Vitarich, ordering Losin to pay the following: (1) P297,462.50 representing the three (3) checks, the payment for which was stopped, with corresponding interest at 12% per annum from the date of the RTC decision until fully paid; (2) P101,450.20 for the unpaid sales also with interest at 12% per annum from the date of the RTC decision until fully paid; (3) P20,000.00 for attorney's fees; and (4) cost of suit.[16] It appears that Vitarich did not challenge this part of the RTC decision anymore.[17]

After Losin obtained a favorable RTC decision, Vitarich now seeks relief from this Court through this petition for review.

After an assessment of the evidentiary records, the Court opines and so holds that the CA erred in reversing the RTC decision. Losin is clearly liable to Vitarich.

Records bear out that Losin transacted with Vitarich's representative Directo.[18] Vitarich presented several charge sales invoices[19] and statement of account[20] to support Losin's accountability for the products delivered to her. A total of P921,083.10 was initially charged to her. Losin, on the other hand, presented a copy of the list of checks allegedly issued to Vitarich through its agent Directo,[21] and a Statement of Payments Made to Vitarich[22] to support her allegation of payment.

It is worth noting that both Vitarich and Losin failed to make a proper recording and documentation of their transactions making it difficult to reconcile the evidence presented by the parties to establish their respective claims.

As a general rule, one who pleads payment has the burden of proving it. In *Jimenez v. NLRC*,[23] the Court ruled that the burden rests on the debtor to prove payment, rather than on the creditor to prove non-payment. The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.

True, the law requires in civil cases that the party who alleges a fact has the burden of proving it. Section 1, Rule 131 of the Rules of Court[24] provides that the burden of proof is the duty of a party to prove the truth of his claim or defense, or any fact in issue by the amount of evidence required by law. In this case, however, the burden of proof is on Losin because she alleges an affirmative defense, namely, payment. Losin failed to discharge that burden.

After examination of the evidence presented, this Court is of the opinion that Losin failed to present a single official receipt to prove payment.[25] This is contrary to the well-settled rule that a receipt, which is a written and signed acknowledgment that money and goods have been delivered, is the best evidence of the fact of payment although not exclusive.[26] All she presented were copies of the list of checks allegedly issued to Vitarich through its agent Directo,[27] a Statement of Payments Made to Vitarich,[28] and apparently copies of the pertinent history of her checking account with Rizal Commercial Banking Corporation (RCBC). At best, these may only serve as documentary records of her business dealings with Vitarich to keep track of the payments made but these are not enough to prove payment.

Article 1249, paragraph 2 of the Civil Code provides:

The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired. [Emphasis supplied]

In the case at bar, no cash payment was proved. It was neither confirmed that the checks issued by Losin were actually encashed by Vitarich. Thus, the Court cannot consider that payment, much less overpayment, made by

Losin.

Now, the Court ascertains the extent of Losin's liability. A perusal of the records shows that Vitarich included in its list of collectibles,[29] several amounts that were not properly supported by Charge Sales Invoice, to wit, (1) P44,987.70; (2) P3,300.00; (3) P28,855.40; (4) P98,166.20; (5) P73,806.00; and (6) P93,888.80.[30] It bears noting that the Charge Sales Invoices presented for the amounts listed as collectibles were undated and unsigned by Losin, the supposed consignee of the goods (except Exh. L). Of the six amounts, the Court particularly considered the P93,888.80 as it was the amount of one of the checks issued by Losin. Indeed, the Court cannot disregard the fact that Losin issued a corresponding check for the following amounts: (1) P93,888.96 (dated August 27, 1996);[31] (2) P50,265.00 (dated August 30, 1996);[32] and (3) P144,309.50 (dated August 31, 1996).[33] The Court believes that Losin would not have issued those checks had she not received the goods so delivered to her. The first two (2) checks were apparently received by the Vitarich but were not encashed because of Losin's instruction to RCBC. Thus, Losin is liable to Vitarich but not for the total amount of the three (3) mentioned checks but only for the amount of P93,888.96 and P50,265.00 corresponding to the first two (2) checks. Losin cannot be held liable for the amount of the third check P144,309.50 because Vitarich did not claim for this amount. The amount of P144,309.50 for some reason, was not among those listed in the list of collectibles of Vitarich.[34]

Aside from the earlier mentioned liabilities, the Court also holds Losin liable for the amount of P78,281.00 which was also among those listed as collectible by Vitarich. Although the Charge Sales Invoice[35] bearing this amount was undated, it nevertheless, appears that the goods corresponding to this amount were actually received by Losin's mother. This was even testified to by Rosa[36] and confirmed by Losin herself.[37] With the exception of the amounts corresponding to the two (2) checks discussed above and the amount of P18,281.00 as appearing in Exh. L, the other amounts appearing on the rest of the Charge Sales Invoice and on the Statement of Account presented by Vitarich cannot be charged on Losin for failure of Vitarich to prove that these amounts are chargeable to her. Vitarich even failed to prove that the rest of the goods as appearing on the other Charge Sales Invoices were actually delivered and received by her or her representative since these Charge Sales Invoices were undated and unsigned. Thus, Losin is liable to pay Vitarich the amounts of P93,888.96, P50,265.00 and P78,281.00 or a total of P222,434.96 only.

Inasmuch as the case at bar involves an obligation not arising from a loan or forbearance of money, but consists in the payment of a sum of money, the legal rate of interest is 6% per annum of the amount demanded.[38] Interest shall continue to run from February 12, 1997, the date when Vitarich demanded payment of the sum amounting to P921,083.10 from Losin (and not from the time of the filing of the Complaint) until finality of the Decision (not until fully paid). The rate of interest shall increase to 12% per annum only from such finality until its satisfaction, the interim period being deemed to be equivalent to a forbearance of credit.[39]

Regarding the grant of attorney's fees, the Court agrees with the RTC that said award is justified. Losin refused to pay Vitarich despite the latter's repeated demands. It was left with no recourse but to litigate and protect its interest. We, however, opt to reduce the same to P10,000.00 from P20,000.00.

The claims against Rosa and Baybay who allegedly did not fully account for their sales transactions have not been substantially proven by evidence. In fact, it appears that Rosa and Baybay resigned. Resignation would not have been possible unless accountabilities with Vitarich had been settled first. It was only the services of Directo that was apparently terminated by Vitarich.[40] Summons, however, was not served on him, so he could not be made to account for the shortages of collection.

WHEREFORE, the November 26, 2007 Decision of the Court of Appeals is REVERSED and SET ASIDE. The

August 9, 2001 Decision of the Regional Trial Court of General Santos City, Branch 23, is REINSTATED subject to MODIFICATIONS. Thus, the dispositive portion should read as follows:

WHEREFORE, judgment is hereby rendered ordering Chona Losin to pay Vitarich Corporation the following:

(1) P222,434.96 representing the two checks, with Check Nos. CX 046324 dated August 27, 1996 and CX 046325 dated August 30, 1996 which had been stopped payment and the amount as appearing in Charge Sales Invoice marked as Exhibit 'L' subject to an interest rate of 6% per annum from February 12, 1997, the date when Vitarich demanded payment of the sum amounting to P921,083.10 from Losin until finality of the Decision. The rate of interest shall increase to 12% per annum only from such finality until its satisfaction, the interim period being deemed to be equivalent to a forbearance of credit;

(2) P10,000.00 representing attorney's fees; and

(3) Cost of suit.

The complaint against Allan Rosa and Arnold Baybay is dismissed. The complaint against Rodrigo Directo is ordered archived until he could be served with summons.

SO ORDERED.

Carpio (Chairperson), Nachura, Peralta, and Abad, JJ., concur.

[1] Rollo, pp. 20-34. Penned by Associate Justice Rodrigo F. Lim, Jr. with Associate Justice Teresita Dy-Liacco Flores and Associate Michael P. Elbinias, concurring.

[2] Petitioner Vitarich Corporation was the plaintiff-appellee in CA G.R. CV No.73726 while Chona Losin was the defendant-appellant.

[3] Rollo, p. 21.

[4] Id. at 22.

[5] Id.

[6] Id. at 22-23.

[7] Id. at 23.

[8] Id. at 39-48.

[9] Id. at 48.

[10] CA rollo, p. 16.

[11] Rollo, pp. 24-33.

[12] Id. at 11.

[13] Microsoft Corporation v. Maxicorp, Inc., G.R. No. 140946, 481 Phil. 550, 561 (2004).

[14] Macasero v. Southern Industrial Gases Philippines, G.R. No. 178524, January 30, 2009, 577 SCRA 500, 504, citing Uy v. Villanueva, G.R. No. 157851, June 29, 2007, 526 SCRA 73, 83-84.

[15] Records, p. 5.

- [16] Rollo, p. 48.
- [17] Id. at 110-122; CA rollo, pp. 44-53.
- [18] TSN, September 24, 1999, pp. 92-93.
- [19] Exhs. "A" to "M."
- [20] Exh. "N."
- [21] Exhs. "1" to "3."
- [22] Exh. "4."
- [23] G.R. No. 116960, 326 Phil. 89, 95 (1996).
- [24] SECTION 1. Burden of proof.--Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.
- [25] TSN, September 24, 1999, pp. 95-97; TSN, February 8, 2001, pp. 273-275.
- [26] *Alonzo v. San Juan*, 491 Phil. 232, 244 (2005).
- [27] Exhs. "1" to "3."
- [28] Exh. "4."
- [29] Exh. "N."
- [30] Rollo, p. 26; See Exhs. "A" to "N."
- [31] Exh. "W-4."
- [32] Exh. "W-3."
- [33] Exh. "W-2."
- [34] See Exh. "N."
- [35] Exh. "L."
- [36] TSN, October 25, 2000, pp. 249-250.
- [37] TSN, February 8, 2001, p. 269.
- [38] Article 2209 of the Civil Code of the Philippines.
- [39] *Tropical Homes, Inc. v. CA*, 338 Phil. 930, 944 (1997).
- [40] See Exh. "X."

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