

IN RE INTESTATE ESTATE OF THE DECEASED GREGORIO DE LA CRUZ. IGNACIO DE LA CRUZ, ADMINISTRATOR AND APPELLEE, VS. IGMIDIO DE LA CRUZ AND PEDRO DE LA CRUZ, OPPOSITORS AND APPELLANTS.

G. R. No. 41354. September 13, 1934

Ponente: GODDARD, J.

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GODDARD, J.:

In this intestate proceeding the administrator filed the following petition:

"Comparece el administrador en el intestado arriba titulado, por medio de su abogado que subscribe, y al Hon. Juzgado respetuosamente manifiesta:

"1. Que por la presente solicita de este Hon. Juzgado una autorizacion para que el administrador pueda vender en venta privada por un precio no menor de P600 las dos parcelas de terreno pertenecientes al intestado, cuyas descripciones son las siguientes:

"Primera parcela.—Un solar que mide 1,056 metros cuadrados, situado en el Barrio de Bambang, Municipio de Bocaue, Bulacan. Linda por el norte con un camino; al este con Lorenzo de los Santos; al sur, con el rio; al oeste, con Gervasia Celestino; avalorado en P160, segun Tax No. 12762.

"Segunda parcela.—Un solar que mide 1,599 metros cuadrados, situado en el Barrio de Bambang, Municipio de Bocaue, Bulacan. Linda al norte con Josef a Dionisio; al este, con Josef a Dionisio, Pedro Valero y Jose de la Cruz; al sur, con camino municipal y al oeste, con Hilario Celestino y Josef a Dionisio; avalorado en P240, segun Tax No. 6614.

"2. Que esta solicitud se funda sobre los motivos siguientes:

"(a) Que en la actualidad la administration del presente Intestado no tiene fondos;

"(b) Que los gastos de la presente administracion hasta la fecha ascienden a la suraa de P343.10;

"(c) Que este Hon. Juzgado ha ordenado al administrador a que pagara la suma de P48 como honorarios de los Comisionados de Avaluo y Reclamaciones en este Intestado, pero que el Administrador no ha podido hasta la fecha cumplir con dicha orden por falta de fondos;

"(d) Que el administrador ha sido recientemente autorizado a presentar acetones correspondientes para el cobro de creditos a favor del Intestado cuyo valor asciende a la suma total de P1,220; el administrador tendra que presentar tres demandas contra los tres deudores y para este fin necesitara la suma de P36.80 para el registro de las tres demandas y para los honorarios del Sheriff por emplazamientos, mas la suma de unos cien pesos para el pago parcial de los gastos de viaje y honorarios del abogado que va atender dichos asuntos.

" {e) Que el administrador desea pagar siquiera parte de jlos gastos de viaje y parte de los honorarios del abogado del administrador de este Intestado, por sus servicios que ha prestado hasta la fecha.

"3. Que la suma de P600 como precio de venta de las dos parcelas de terreno arriba descritas es muy ventajosa para la administracion y es la mayor oferta que ha recibido el administrador, teniendo en cuenta la presente depresion economica.

"4. Que es necesario vender las dos parcelas de terreno arriba descritas porque nadie quiere comprarlas a menos que se vendan juntamente, aparte del hecho de que el producto de venta de una de las referidas parcelas de terreno no sera suficiente para cubrir los gastos de la administracion.

"5. Que sera ventajoso vender los referidos terrenos en venta privada, porque se podria obtener mejor precio.

"Tor lo tanto, el administrador suplica al Hon. Juzgado se sirva autorizar al administrador para que pueda vender las dos parcelas de terreno arriba descritas en la forma arriba mencionada por el precio no menor de P600, entendiendose que la escritura que se otorgue para dicho fin sea antes sometida para la aprobacion del Hon. Juzgado.

"Bocaue, para Malolos, Bulacan, hoy 17 de enero de 1933."

On February 18, 1933, the lower court authorized the sale of the two parcels of land, described in the above petition, in an order which reads as follows:

"Tratase de una mocion registrada por la representation del administrador Ignacio de la Cruz el dia 20 de enero de 1933.

"Pidese en dicha mocion que este Juzgado autorice al Administrador mencionado a vender los dos solares o parcelas que se describen en la mocion, avaluados en P160 y P240, respectivamente, para los efectos del pago del impuesto territorial.

"Despues de considerar el Juzgado las razones por las que se pide la mencionada autorizacion para vender las dos citadas parcelas, y despues de considerar igualmente las razones que se alegan en el escrito de oposicion contra la citada solicitud de autorizacion para vender, este Juzgado es de opinion que el administrador Ignacio de la Cruz ha ciertamente menester de fondos para poder cumplir debidamente con sus deberes de administrador y para interponer las acciones y demandas que fuesen necesarias para el interes de este intestado. El Juzgado esta igualraente convencido por las alegaciones de la representation del administrador que este no dispone de ningun fondo que puede ser gastado en el cumplimiento de sus deberes.

"Por las consideraciones expuestas, el Juzgado, de acuerdo con la solicitud, concede autorizacion al administrador Ignacio de la Cruz para vender las dos parcelas que se describen en la solicitud a un precio total que no sea menor de P600, pudiendo, a este efecto, otorgar la escritura o escrituras correspondientes, las cuales, sin embargo, no surtiran sus efectos hasta que sean debidamente aprobadas por este Juzgado."

On March 11, 1933, the administrator executed a deed of sale in favor of Tomas de Guzman and Benita de la Roma in which it appears that said parcels were sold at private sale for the sum of P600.

Later Igmidio de la Cruz and Pedro de la Cruz, legitimate sons of Gregorio de la Cruz, filed a petition in which they prayed:

"Por tanto, respetuosamente, piden se declaren nulos y se or dene se dejen sin efecto el auto de febrero 18, 1933, jautorizando dicha venta, asi como la escritura de venta otorgada en marzo 11, 1933, por el administrador judicial a favor de los conyuges Tomas de Guzman y Benita de la Roma."

This prayer is based upon the following allegations:

"Que al obtenerse y concederse dicha autorizacion para vender, los herederos aqui comparecientes no han prestado consentimiento por escrito, pues el Administrador Judicial ni siquiera ha intentado pedir dicho consentimiento, por cuyo motivo tanto la escritura de venta como la autorizacion para otorgarla son ilegales y

nulas per se, de acuerdo con los preceptos imperativos de los artículos 714 y 718 del Código de Procedimiento Civil. * * *

"Que en la obtención de dicha autorización para vender se han quebrantado los requisitos legales siguientes:

"(a) Porque no se ha obtenido el consentimiento por escrito de todos los herederos.

"(b) Porque no se ha hecho constar en la solicitud el valor de los bienes muebles de este Intestado.

"(c) Porque el Juzgado no ha señalado día ni lugar para la vista o audiencia de la solicitud.

"(d) Porque el Juzgado no ha requerido que se sirviese el aviso requerido por la ley para la vista de dicha solicitud.

"(e) Porque no ha cumplido el requerimiento de la ley de que el aviso para la vista de la solicitud se publicara por tres semanas sucesivas en un periódico designado por el Juzgado, ni se ha servido a los herederos aquí comparecientes aviso personal.

"(f) Porque no se ha determinado si procede exigirse o no que el Administrador prestara una fianza adicional, para proteger los derechos de los herederos contra los daños y perjuicios que pudiese causarles la venta de dichas dos parcelas de terreno, especialmente por haberse fijado solamente la suma de P600, cuando el verdadero valor de dichas parcelas de terreno es mucho mayor, y cuando, en igualdad de condiciones, debe concederse preferencia a los herederos para comprar dichas parcelas de terreno, y los comparecientes están dispuestos a ejercer dicho derecho de preferencia.

"(g) Porque en el auto del Juzgado concediendo autorización para vender dichas parcelas de terreno no se ha hecho constar, que se han cumplido todos los requisitos prescritos en las cuatro primeras subdivisiones del artículo 722 del Código de Procedimiento Civil. * * *

"Que a causa de las ilegalidades arriba mencionadas, tanto el auto autorizando la venta como la venta misma son nulos ab initio."

The sections of the Code of Civil Procedure, copied in that petition read as follows:

"SEC. 714. Realty may be sold or encumbered though personality not exhausted.—When the personal estate of the deceased is not sufficient to pay the debts and charges of administration without injuring the business of those interested in the estate, or otherwise prejudicing their interests, and where a testator has not otherwise made sufficient provision for the payment of such debts and charges, the court, on application of the executor or administrator with the consent and approbation, in writing, of the heirs, devisees, and legatees, residing in the Philippine Islands, may grant a license to the executor or administrator to sell, mortgage or otherwise encumber for that purpose real, in lieu of personal estate, if it clearly appears that such sale, mortgaging or encumbrance of real estate would be beneficial to the persons interested and will not defeat any devise of land; in which case the assent of the devisee shall be required."

"SEC. 718. Estate may be sold when beneficial to heirs.—When it appears to the court that it will be beneficial to the heirs, devisees, or legatees, and those interested in an estate, by reason of their residing out of the Islands or otherwise, that a part or the whole of the personal estate, or a part or the whole of the real estate, or both the real and personal estate, should be sold, the court may, upon application of the administrator or executor, with the consent and approbation, in writing, of the heirs, devisees, and legatees who are interested in the estate to be sold, grant license to sell the whole or a part of said estate, although not necessary to pay debts, legacies, or charges of administration; but such license shall not be granted if inconsistent with the provisions of a will. In case of such sale, the proceeds shall be decreed and assigned to the persons entitled to the estate, and in the same proportions."

"SEC. 722. Regulations for license to sell.—When an executor or administrator considers it necessary or

beneficial to sell real or personal estate, in cases provided by law, he may make application to the court having jurisdiction of the estate, and such court may grant license, when it appears necessary or beneficial, under the following regulations :

"1. The executor or administrator shall present to the court his petition in writing, setting forth the amount of debts due from the deceased, with charges of administration, the value of the personal estate, situation of the estate to be sold, or such other facts as show that the sale is necessary or beneficial;

"2. In cases where the consent of heirs, devisees, and legatees is required, the executor or administrator shall produce to the court their assent in writing, and signed by such heirs, devisees, or legatees, or by the guardians of such as are minors or otherwise under guardianship;

"3. The court shall thereupon appoint a time and place of hearing for deciding upon such application, and shall require notice to be given of such application, and of the time and place of hearing to the persons interested; which notice shall state the nature of the application and the reason for the same, the time and place of hearing, and shall be published three weeks successively previous thereto, in a newspaper of general circulation in the neighborhood of those interested, to be designated by the court; and the court may order such further notice as is adjudged proper. If personal notice is given to the persons interested, the public notice may be dispensed with;

"4. If the court requires it, the executor or administrator, before license is granted, shall give a new bond, in such sum and with such sureties as the court directs, conditioned that such executor or administrator shall account for the proceeds of such sale;

"5. If the proof produced satisfies the court and if the regulations in the first four subdivisions of this section are complied with, the court may, by decree, authorize the executor or administrator to sell such part of the estate as is deemed necessary, either at public or private sale, as would be most beneficial to all parties concerned, and furnish the executor or administrator with certified copy of such license or order of sale;

"6. If the order is to sell the estate at auction, the court shall designate the mode of giving notice of the time and place of the sale, which shall be stated in the copy or certificate of such order furnished the executor or administrator;

"7. The record of the order of sale in the court, and the copy or the certificate of such order furnished the executor or administrator, shall state that such of the requisites prescribed in the first four subdivisions of this section, as are required in the case, are complied with; and such certificate or copy of the order of sale shall be recorded in the office of the Registrar of Land Titles of the province in which the lands thus to be sold are situated."

The lower court denied the petition of Igmidio and Pedro de la Cruz in an order, dated December 6, 1933, which reads:

"Se trata de una moci6n de Igmidio y Pedro de la Cruz de fecha 5 de mayo de 1933 en la que se pide se deje sin efecto el auto de este Juzgado de fecha 18 de febrero de 1933 e igualmente se declare nula la escritura de venta de fecha 11 de marzo de 1933 otorgada por el Administrador. Contra esta moci6n de los referidos Igmidio y Pedro de la Cruz, la representaci6n del administrador se opone sobre los fundamentos alegados en su escrito de fecha 1.º de febrero de 1933.

"Examinados detenidamente los autos de la presente causa se desprende que la solicitud de venta del administrador al tiempo de su presentacion llevaba la conformidad de los idos herederos Modesta y Silvino de la Cruz, habiendo sido notificados por correo certificado los otros dos herederos Igmidio y Pedro de la Cruz, hoy opositores, representados estos por su abogado Sr. M. A. Ferrer, de acuerdo con el articulo 714 delCodigo de Procedimiento Civil tal como esta enmendado por la Ley No. 3882; que los mismos en tiempo oportuno presentaron su objecion a la solicitud de venta, pero el Juzgado no obstante dicha oposicion concedio

autorizacion al administrador por ser beneficiosa a los intereses del presente Intestado.

"Por los hechos arriba relatados, el Juzgado no encuentra terminos habiles para dejar sin efecto el auto de fecha 18 de febrero de 1933, y anular la escritura de venta otorgada por el administrador Ignacio de la Cruz en virtud de la autorizacion concedida a este. Se deniega, por tanto, la mocion de Igmidio y Pedro de la Cruz de fecha 5 de mayo de 1933."

An exception was noted to the above orders, dated February 18 and December 6, 1933. A record of appeal was filed which was approved by the lower court. The only error assigned by the appellants reads as follows:

"El Juzgado errd al haber autorizado, con infraccion de preceptos expresos delCodigo de Procedimiento Civil, la venta de dos parcelas de terreno de este intestado, y al no haber revocado dicho auto y la venta otorgada en virtud del mismo."

The following paragraph of their brief, based upon the facts alleged in their petition, clearly indicates that the appellants question the jurisdiction of the lower court to order the sale of real estate without complying with the provisions of the section of the Code of Civil Procedure copied above:

"El examen de los autos del intestado demostrara que no se han cumplido los requerimientos esenciales exigidos por la ley, antes de que pueda autorizarse la venta de inmuebles de un intestado."

The appellants overlooked the fact that section 714, as amended by Act No. 3882, now reads as follows:

"SEC. 714. Realty may be sold or encumbered.—When there is no personal estate of the deceased or when, though there be such, its sale would redound to the detriment of the interests of the participants in the estate and the deceased has left no testamentary disposition for the payment of his debts and charges of administration, the court, on application of the executor or administrator, and on written notice to the heirs, devisees, and other persons interested, may grant him a license to sell, mortgage or otherwise encumber for that purpose real estate, if it clearly appears that such sale, mortgaging or encumbrance would be beneficial to the persons interested and will not defeat any devise of land; in which case the assent of the devisee shall be required." In view of this amendment the court may grant a license to an executor or administrator to sell real property, in lieu of personal estate, for the payment of debts and charges of an estate without the consent of the heirs, "if it clearly appears that such a sale would be beneficial to the persons interested and will not defeat any devise of land; in which case the assent of the devisee shall be required."

The record shows that the date of the hearing of the petition was known to appellants as they appeared and filed an opposition in writing and that copies of the petition were sent to them. As to their contention that the notice was not published in a newspaper three weeks successively previous to the hearing, paragraph 3 of section 722, Code of Civil Procedure, also provides that if personal notice is given to the persons interested, the public notice may be dispensed with. As to requiring the administrator to give a new bond before license to sell is granted, paragraph 4 of the same section provides: "If the court requires it, the executor or administrator, before license is granted, shall give a new bond,* * *". It is evident that the court may use its discretion and may or may not require a new bond.

Therefore, none of the above contentions of the appellants has any merit whatsoever.

Section 718 of the Code of Civil Procedure is not applicable to the facts in this case.

Section 714, as amended, quoted above, provides, among other things, that when there is no personal estate of the deceased or when, though there be such, its sale would redound to the detriment of the interests of the participants in the estate * * * the court on application of the executor or administrator * * * may grant him a license to sell * * * real estate for the purposes mentioned in that section.

Section 722, quoted above, provides, among other things, that when an executor or administrator considers it necessary or beneficial to sell real or personal estate * * * he may make application to the court having jurisdiction of the estate, and such court may grant license * * * under the following regulations:

"1. The executor or administrator shall present to the court his petition in writing, setting forth the amount of debts due from the deceased, with charges of administration, the value of the personal estate, situation of the estate to be sold, or such other facts as show that the sale is necessary or beneficial;"

The petition of the administrator in this case does not set forth the value of the personal estate nor does it allege that there is no personal estate nor that if there be such its sale would redound to the detriment of the interests of the participants therein.

This court held in the case of *Buenaventura and Del Rosario vs. Ramos* (43 Phil., 704), before section 714 was amended, that the executor or administrator of the estate of a deceased person is without authority to sell real estate, when there are no debts or obligations existing against the estate, without the consent and approbation, in writing, of the heirs who are interested in the estate to be sold.

In the case of the *Estate of Gamboa Carpizo vs. Floranza* (12 Phil., 191), this court held that an order made by a Court of First Instance, in probate proceedings, for the sale of real property belonging to the estate of a deceased person, is void when no notice of the hearing upon the petition for such sale is given, as required by section 722 of the Code of Civil Procedure.

It will be noted that when the first case, cited above, was decided the production of the consent in writing of the heirs was required by regulation No. 2 of section 722.

Notice by publication or personal notice to the persons interested is still required by regulation No. 3 of section 722.

Surely the requirement in regulation No. 1 of section 722 as to the setting forth of the value of the personal estate of the deceased is just as important as the others mentioned in the case cited above. This conclusion is inevitable if regulation No. 7 of section 722 means anything. This regulation provides that "The record of the order of sale in the court, and the copy or the certificate of such order furnished the executor or administrator, shall state that such of the requisites prescribed in the first four subdivisions of this section, as are required in the case, are complied with; * * *."

The authorities are practically unanimous in holding that one of the requisite averments of petitions for the sale of a decedent's lands is that there is not sufficient personalty to cover the amount of the debts or charges of administration.

"In order to confer jurisdiction the petition must disclose the jurisdictional facts. Otherwise the purchaser may acquire no legal title, though he may be recognized as having an equitable title enforceable against the heirs who receive their share of the purchase money.* * *

"It is generally considered that two of the requisite averments of petitions for the sale of a decedent's lands are that there are unpaid debts of the decedent and that there is not sufficient personalty to pay the amount of such debts." (11 R. C. L., 326, 327.)

"* * *The court's jurisdiction to order the sale does not inhere in its general authority over the administration of the estate, but is invoked by the petition for the sale. The power of the court in the premises does not arise till a petition is presented by the administrator or other proper party. When a proper petition is filed, then jurisdiction over the particular matter is acquired. It seems that the jurisdiction of the court essentially depends on the averments of the petition and not on the truth or falsity of such averments. * * *" (11 R. C. L., 326.)

"In order to confer jurisdiction the petition must disclose the jurisdictional facts. Otherwise the purchaser may acquire no legal title, though he may be recognized as having an equitable title enforceable against the heirs who receive their share of the purchase money. The reason for this rule appears to lie in the fact that the necessity for a sale is not a matter for the executor or administrator to determine, but is a conclusion which the court must draw from the facts stated, and the petition therefore must furnish the materials for its judgment. The essential averments necessarily vary in the several states. As an illustration of a proper petition it may be stated that a petition was upheld where it alleged that the estate was owing debts to a certain amount, that the personal property of such estate was insufficient to pay such debts, and that the will of the decedent gave no power to sell his lands for the payment of his debts. As a practical matter the filing of a petition containing the information needed for the reaching of a proper decision of the court as to the necessity and propriety of the proposed sale is conclusive to the orderly conduct of the administration and may avoid expensive blunders." (11 R. C. L., 326, 327.)

In view of the provisions of our Code of Civil Procedure, the holdings of this court in the two cases cited above and the jurisprudence copied from Ruling Case Law, it is held that the averment as to the value of the personal estate of a deceased person, in a probate proceeding, is an essential and necessary requisite to a petition for the sale of real estate and that a Court of First Instance acquires no jurisdiction to order such sale if that averment does not appear in the petition; that such an order is void and that a sale of real estate by virtue of such an order is null and void.

The orders of the lower court, dated February 18, 1933, and December 6, 1933, are set aside and the sale of the two parcels of land made by virtue of said orders is declared null and void.

Without costs. So ordered.

Avancena, C. J., Street, Vickers, Imperial, Butte, and Diaz, JJ., concur.

DISSENTING

MALCOLM and VILLA-REAL, JJ., dissenting:

It is customary for appellate courts to decide cases on the points specifically relied upon by the parties. A reading of the three scanty pages which make up the brief of the appellants will disclose that the word "jurisdiction" nowhere appears in that brief. A reading of the brief of the appellee will disclose that counsel for the appellee was unadvised that the question of jurisdiction was at issue, and so contented "himself with answering the argument of the appellants addressed to section 714 of the Code of Civil Procedure.

But this is not all. While the bill of exceptions is silent as to the exact ground for opposition to the confirmation of the sale of the realty, even now no showing is made that there is any personality available for sale. It is a general rule that when a court has acted on a petition and ordered a sale, the sale will be sustained in spite of informalities or statements merely defective. It has often been held that jurisdiction will be presumed from the fact that the court made the order.

We are opposed to making out case? for attorneys which they do not make out themselves. We are opposed to sanctioning technicalities. We are opposed to authorizing the eating up of small estates of deceased persons, like the one before us, in useless litigation. By the time the courts get through with this little estate, there will be no estate to be distributed.

For these reasons we vote for the affirmance of the orders of the trial court.

DISSENTING

ABAD SANTOS, J.,

I am constrained to express my disagreement with the decision of the majority of the court, because I believe that it sets a dangerous precedent. To realize fully the importance of the principle involved in this case, it is necessary to advert to certain salient facts. In the first place, it should be noted that the petition for the sale of the real estate was filed by the administrator on January 17, 1933. As stated in the majority opinion, "The record shows that the date of the hearing of the petition was known to appellants as they appeared and filed an opposition in writing and that copies' of the petition were sent to them." After considering the petition and the objections made thereto by the appellants, the lower court, on February 18, 1933, issued an order authorizing the sale. Pursuant to this order the property was sold to the spouses Tomas de Guzman and Benita de la Roma on March 11, 1933, which sale was duly approved by the court.

Instead of appealing from the order of the lower court of February 18, 1933, authorizing the sale, the appellants did nothing until long after the order had become final and the sale made thereunder had been approved by the court, that is to say, until May 5, 1933, when they filed a petition praying that both said order and the deed of sale executed by the administrator on March 11, 1933, be declared null and of no effect. Appellants made it appear in their petition that they were ignorant of the petition for the sale of the real estate filed by the administrator on January 17, 1933, but, as already indicated, the majority of the court correctly found that this representation made under oath by the appellants is completely belied by the record. Notwithstanding this fact, however, and also notwithstanding the fact that, after due consideration, the petition to annul the sale was denied by the lower court on December 6, 1933, this court, by the decision of the majority, now sets aside the orders of the lower court dated February 18, 1933 and December 6, 1933, and declares null and void the sale on the ground that "the averment as to the value of the personal estate of a deceased person, in a probate proceeding, is an essential and necessary requisite to a petition for the sale of real estate and that a Court of First Instance acquires no jurisdiction to order such sale if that averment does not appear in the petition; that such an order is void and that a sale of real estate by virtue of such an order is null and void."

Under section 714 of the Code of Civil Procedure, as amended, the court may, upon application by the executor or administrator, authorize the sale of the real estate, even if there is personal estate, if it clearly appears that such sale would be beneficial to the persons interested and will not defeat any devise of land. It is thus seen that the jurisdictional fact which is the ground-work of the proceeding and which, when made to appear to the court by an appropriate petition, is sufficient to set in motion the exercise of jurisdiction, is not the existence or value of the personal estate, but the fact that the sale of the real estate would be beneficial to the persons interested.

The general rule is that, where the court has jurisdiction of the parties and the subject matter of the action, its judgment is not open to attack or impeachment by parties or privies in any collateral action or proceeding. In the instant case, the petition to have declared null and void both the order of the lower court of February 18, 1933, and the sale made thereunder, was tantamount to a collateral attack upon a judgment or decree, since it was filed long after the order sought to be annulled became final, and the sale made in accordance therewith was approved by the court. As stated by the court in *King vs. Kent's Heirs* (29 Ala., 542): " * * * When the petition is directly

assailed, the question is one of pleading, and the interments are made against the pleader; but a different rule prevails, when the proceedings have gone into a decree, under which rights of property have attached. Then every reasonable intendment in the construction of the language of the petition, must be in favor of the validity of the paper. Under a different rule, designing persons might withhold objections for amendable defects, until after the proceedings had terminated, and rights had attached, and then vitiate the whole proceeding; thus converting a court of justice into a snare."

For the foregoing reasons, I am of the opinion that the order appealed from should be affirmed

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