

ALBERT NABUS, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND MARIANO LIM, RESPONDENTS.

G.R. No. 91670. February 07, 1991

Ponente: REGALADO, J.

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REGALADO, J.:

This petition for review by certiorari seeks the reversal of the decision[1] of respondent Court of Appeals in CA-G.R. CV No. 15846 which affirmed the order of the trial court dismissing herein petitioner's complaint for rescission with damages on the ground of *res judicata*.

The records show that on June 22, 1970, herein petitioner Albert Nabus brought an action for reconveyance of a parcel of land against herein private respondent Mariano Lim in the then Court of First Instance of Baguio and Benguet, La Trinidad, Benguet, which was docketed as Civil Case No. 2159(24), alleging *inter alia*:

"2. That on June 23, 1965, plaintiff sold to defendant one (1) parcel of land, situated in the Barrio of Ambiong, Municipality of La Trinidad, Province of Benguet, x x x as evidenced by a deed of absolute sale, x x x;

"3. That the said property is a portion of a bigger parcel of land, with an area of 15 hectares, 05 ares and 17 centares, covered by and embraced in Original Certificate of Title No. P-136 (Free Patent No. V-48737) issued in the name of plaintiff, on July 5, 1956, x x x;

"4. That although the purchase price of the x x x property in the amount of P258,000.00 was amortized x x x, title to the same was transferred to the defendant under TCT No. 2814, x x x, and was later subdivided by said defendant into four (4) lots x x x;

"5. That as of the date hereof, defendant has still an unpaid balance of P75,000.00;

"6. That on June 8, 1970 (or 4 years, 11 months and 15 days from June 23, 1965); plaintiff through counsel offered to repurchase the above-described parcel of land, pursuant to Sec. 119 of the Public Land Law (C.A. No. 141, as amended), as evidenced by a letter of the undersigned counsel to defendant, x x x; and which was confirmed by the plaintiff in his letter to defendant, dated June 12, 1970, x x x.

"7. That notwithstanding the written offers x x x and subsequent verbal offers of plaintiff to repurchase the above-described property according to law, the defendant refused and denied, and still refuses and denies, the said offer;

"8. That plaintiff is ready and willing to repurchase the said property and to pay defendant the sum of P183,000.00, the difference between the stipulated purchase price of P258,000.00 and the unpaid balance thereof in the amount of P75,000.00 referred to in paragraph 5 hereof;"[2]

x x x

On December 11, 1971, after Nabus had rested his case, Lim moved to dismiss the complaint in Civil Case No. 2159(24) on the grounds of lack of cause of action, there being no tender of the repurchase price of the parcel of land in question, and of prescription. This was denied by the trial court. Thereafter, Lim filed a motion for

reconsideration of the order denying his motion to dismiss, to which on February 3, 1972 Nabus filed an opposition on the ground that tender of the repurchase price of the parcel of land in question was allegedly not a requirement under the Public Land Act, unlike the provisions of the Civil Code, the repurchase of the said lot being a substantive right coupled with public interest.

On February 5, 1980, the trial court, upon motion of Lim, ordered Nabus to deposit the repurchase price of the said lot in the amount of P183,000.00. On November 13, 1980, Lim filed a motion to dismiss Civil Case No. 2159(24) for failure of Nabus to deposit in court the required amount. On December 1, 1980, Nabus, by counsel, filed a motion for extension of time within which to file an opposition to Lim's motion to dismiss. On March 13, 1981, no opposition having been filed to the motion to dismiss because of the death of Nabus' counsel, the trial court dismissed with prejudice Civil Case No. 2159(24) for his failure to deposit the required amount, evincing lack of interest to repurchase the parcel of land in question.[3] On May 14, 1981, Nabus filed, through a new counsel, a motion for reconsideration of the order dismissing Civil Case No. 2159(24). On January 26, 1982, the trial court denied Nabus' motion for reconsideration.[4] No appeal was taken from said order of dismissal.

On March 15, 1982, Nabus filed Civil Case No. 4293 in the same Court of First Instance of Baguio and Benguet for the annulment of the order of dismissal in Civil Case No. 2159(24), claiming that the failure of Atty. Florendo, his former counsel, to file an opposition to Lim's motion to dismiss was due to his serious illness; that the dismissal of his complaint therein, without Nabus being able to file an opposition to Lim's motion to dismiss, deprived him of the opportunity to be heard amounting to denial of due process; and that the denial of his motion for reconsideration constituted grave abuse of discretion tantamount to lack of jurisdiction on the part of the trial court.

Civil Case No. 4293 was subsequently amended to allege grounds for rescission and damages as additional causes of action. These second and third causes of action added in the amended complaint aver that:

"SECOND CAUSE OF ACTION

x x x

21. That as appearing in the Deed of Absolute Sale Annex 'A' of Civil Case No. 2159, x x x defendant was to pay the purchase price of P258,000.00 in installment; however, defendant failed to pay the total amount of P258,000.00 having paid only the sum of P183,000.00 and leaving an unpaid balance of P75,000.00 which defendant failed and refused to pay in spite of repeated demands;

22. That due to the foregoing, plaintiff is left with no other alternative but to seek for a rescission (sic) of the contract of Sale aforesaid x x x;

23. That plaintiff is ready and willing to return the sum of P183,000.00 he has received from defendant minus of course such damages as the Court may adjudge against defendant;

24. That the said properties covered by said Deed of Absolute Sale have not been transferred to third persons acting in good faith;

"THIRD CAUSE OF ACTION

25. That due to the gross and evident bad faith of defendant in committing the foregoing acts and in failing and refusing to comply with his obligations to the plaintiff, the latter has suffered damages to wit: - attorneys fee - 15% of the total value of the lots subject matter of the aforesaid Deed of Absolute Sale; expenses and losses incident to litigation - P500,000.00; moral and other damages - one hundred thousand pesos (P100,000.00)."[5]

On August 8, 1986, Lim filed a motion to dismiss the complaint in Civil Case No. 4293 on the ground that it was

barred by prior judgment or res judicata and that the action had already prescribed. On October 7, 1986, Nabus filed an opposition to the motion to dismiss. A reply to the opposition and a supplement to his motion to dismiss was filed by Lim, to which Nabus filed a rejoinder. On July 22, 1987, the trial court dismissed the complaint in Civil Case No. 4293 on both grounds invoked in the motion to dismiss.[6]

On appeal to respondent court, Nabus claimed that the trial court erred in holding that all the causes of action in the case are barred by res judicata and that the action for rescission and damages has prescribed. The annulment of the dismissal order issued in Civil Case No. 2159(24) was no longer pursued or raised on appeal.

As earlier stated, respondent court sustained the said order of dismissal on the ground of res judicata, the relevant portion of its decision reading as follows:

"It is within the power of the trial court to dismiss the appellant's complaint in Civil Case No. 2159(24) for failure to comply with its order to deposit the repurchase price of the parcel of land in question. And such dismissal, rightly or wrongly, has the effect of an adjudication upon the merits, it not having been provided otherwise (Section 3, Rule 17, Revised Rules of Court). Dismissal on a technicality is no different in effect and consequences from a dismissal on the merits under the cited provision of the Rules (General Offset Press, Inc. vs. Anatalio, 17 SCRA 688, 691). So too is the order of dismissal, with prejudice, res judicata upon finality under Section 49, Rule 39, of the Revised Rules of Court, x x x."

Respondent court, however, found no necessity to rule on the matter of prescription.

Hence, the instant petition reiterating substantially the same issues raised on appeal with respondent court, that is, whether or not (1) the complaint for rescission and damages is barred by the order of dismissal of petitioner's action for reconveyance under the principle of res judicata; (2) petitioner's action for rescission has prescribed; and (3) it is equitable to deny petitioner his day in court, considering that admittedly private respondent has not paid the last three installments of the contract of sale amounting to P75,000.00.

I. Res judicata is a rule of universal law pervading every well regulated system of jurisprudence, and is put on two grounds, embodied in various maxims of the common law; the one, public policy and necessity, which makes it the interest of the state that there should be an end to litigation - interest reipublicae ut sit finis litium; the other, the hardship on the individual that he should be vexed twice for the same cause - nemo debet bis vexari pro una et eadem causa.[7] The doctrine applies and treats the final determination of the action as speaking the infallible truth as to the rights of the parties as to the entire subject of the controversy, and such controversy and every part of it must stand irrevocably closed by such determination. The sum and substance of the whole doctrine is that a matter once judicially decided is finally decided.[8]

The foundation principle upon which the doctrine of res judicata rests is that parties ought not to be permitted to litigate the same issue more than once; that, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.[9]

Section 49, Rule 39 of the Rules of Court which embodies the principle of res judicata pertinent to this case provides:

x x x

"(b) In other cases the judgment or order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity;

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto."

The principle of *res judicata* actually embraces two different concepts: (1) bar by former judgment and (2) conclusiveness of judgment. There is "bar by former judgment" when, between the first case where the judgment was rendered, and the second case where such judgment is invoked, there is identity of parties, subject matter and cause of action. When the three identities are present, the judgment on the merits rendered in the first constitutes an absolute bar to the subsequent action. It is final as to the claim or demand in controversy, including the parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. But where between the first case wherein the judgment is rendered and the second case wherein such judgment is invoked, there is identity of parties, but there is no identity of cause of action, the judgment is conclusive in the second case, only as to those matters actually and directly controverted and determined, and not as to matters merely involved therein. This is what is termed "conclusiveness of the judgment." [10]

A. A case is said to be barred by a former judgment when the following requisites concur: (1) the presence of a final former, judgment; (2) the former judgment was rendered by a court having jurisdiction over the subject matter and the parties; (3) the former judgment is a judgment on the merits; and, (4) there is, between the first and the second actions, identity of parties, subject matter, and causes of action. [11] There is no dispute as to the existence of and compliance with the first two elements of *res judicata* in the case at bar. In issue are the alleged absence of a judgment on the merits in the first case and the identity of causes of action in both cases.

1. Elemental is the rule that in order that a judgment may operate as a bar to a subsequent suit on the same cause of action it must have been based on the merits of the case. And a judgment is on the merits when it determines the rights and liabilities of the parties based on the disclosed facts, irrespective of formal, technical, or dilatory objections. It is not necessary, however, that there should have been a trial. If the judgment is general, and not based on any technical defect or objection, and the parties had a full legal opportunity to be heard on their respective claims and contentions, it is on the merits although there was no actual hearing or argument on the facts of the case. [12] Such is one of the situations contemplated in Section 3, Rule 17 of the Rules of Court, where a complaint is dismissed for failure of the plaintiff to comply with a lawful order of the court which dismissal, as correctly argued by private respondent, has the effect of an adjudication upon the merits.

In the present case, petitioner labors upon the erroneous conceptualization that the order of dismissal issued in Civil Case No. 2159(24) was based merely on a preliminary matter, that is, failure to deposit the repurchase price which allegedly is not the matter in controversy, hence it is not an adjudication on the merits. While we do not discount the rule that a judgment dismissing a suit because of a purely technical defect, irregularity, or informality is not strictly on the merits and is, therefore, no bar to subsequent actions, [13] this is however, not applicable to the present case. Under the circumstances obtaining herein, we have to consequently reject petitioner's ratiocination.

Firstly, it will be remembered that the order dismissing petitioner's complaint in Civil Case No. 2159(24) is specified to be with prejudice. Our law reports are replete with jurisprudence declaring that a dismissal with prejudice is an adjudication on the merits which finally disposes of the controversy and, unless reversed, constitutes a bar to a future action. [14]

Secondly, the aforesaid order of dismissal is not a dismissal on sheer technicality but actually goes into the very substance of the relief sought therein by petitioner, that is, for the reconveyance of the subject property which was denied in said case, and must thus be regarded as an adjudication on the merits. It is the dismissal premised on

such technical grounds as a misjoinder, non-joinder, misnomer, or defect of parties; or that plaintiff has no sufficient title or authority to bring the suit, or want of legal capacity to sue on his part; or formal defects in the pleadings; or a dismissal of the action for failure of, the complaint to state a cause of action which is not a bar to a new action on a good complaint wherein the defects and omissions in the first complaint are corrected and supplied by the second complaint. Also, a failure to allege a matter essential to the jurisdiction of the court is no bar to a second complaint wherein such defect is cured or obviated by further and sufficient allegations.[15]

The aforesaid instances are deemed to have no bearing on the merits of the case and will thus not bar a subsequent suit on the same cause of action. The order of dismissal issued in Civil Case No. 2159(24) definitely does not fall within any of the above-mentioned exceptions and is considered in our procedural rules as an adjudication on the merits.[16] It would not be amiss to state that a "dismissal of an action with prejudice" by court order is to be considered no less than a "judgment." [17]

It must be noted, however, that while the first order of dismissal is an adjudication on the merits, this does not necessarily mean that it is a bar to the filing of petitioner's second complaint for rescission, for, as hereinunder discussed, there is no identity of causes of action whereby the first action would constitute *res judicata* to the second.

2. Petitioner next submits that there can be no identity of causes of action between the first and second cases since the former involves the right of petitioner to redeem the subject property under Section 119 of the Public Land Act within five years from the date of sale, whereas the latter arose from the failure of private respondent to pay the balance of the purchase price thereby authorizing the rescission of the contract of sale pursuant to Article 1191 of the Civil Code. More importantly, it is argued that the same evidence does not support and establish the causes of action in both cases.

On the other hand, private respondent theorizes that there is identity of causes of action between the previous and subsequent cases in that: (1) the allegations contained and the facts which form the bases of the two complaints are essentially and substantially the same; (2) the pivotal issue raised in both cases involves non-payment of the last three installments of the purchase price; (3) the crux of the prayer of the two cases are exactly the same, that is, the reconveyance of the subject lot; (4) both actions originated from the same deed of sale; and, (5) the documentary evidence presented, as well as the testimony given by the petitioner, in Civil Case No. 2159(24) can also be used to sustain the prosecution of Civil Case No. 4293.

We find for petitioner on this score.

In determining whether causes of action are identical so as to warrant application of the rule of *res judicata*, the test most commonly stated is to ascertain whether the same evidence which is necessary to sustain the second action would have been sufficient to authorize a recovery in the first, even if the forms or nature of the two actions be different. If the same facts or evidence would sustain both, the two actions are considered the same within the rule that the judgment in the former is a bar to the subsequent action; otherwise it is not. It has been said that this method is the best and most accurate test as to whether a former judgment is a bar in subsequent proceedings between the same parties, and it has even been designated as infallible.[18]

It will be observed that Civil Case No. 2159(24) is based on petitioner's right to repurchase the subject property under Section 119 of the Public Land Act, while Civil Case No. 4293 involves the rescission of the contract of sale by reason of the failure of private respondent to pay in full the value of the property, pursuant to Article 1191 of the Civil Code. The former, in order to prosper, requires proof that the land was granted under a free patent, that the land was sold within five years from the grant thereof, and that the action for reconveyance was filed within five years from the execution of the deed of sale. In the second case, proof of the unpaid installments is the

only evidence necessary to sustain the action for rescission. It is thus apparent that a different set of evidence is necessary to sustain and establish the variant causes of action in the two cases.

In addition, causes of action which are distinct and independent, although arising out of the same contract, transaction, or state of facts, may be sued on separately, recovery on one being no bar to subsequent actions on others.[19] Also, the mere fact that the same relief is sought in the subsequent action will not render the judgment in the prior action operative as *res judicata*,[20] such as where the two actions are brought on different statutes,[21] as in the case at bar.

Under the circumstances, therefore, the doctrine of *res judicata* will not apply. To repeat, for emphasis, the cause of action asserted by petitioner in the former suit was anchored upon his right to repurchase the subject lot. The cause of action sought to be enforced in the present action is predicated upon the failure of private respondent to pay the last three installments of the purchase price. It is a cause of action which is wholly independent of, and entirely separate and discrete from, the alleged cause of action asserted by petitioner in the former suit. Since petitioner seeks relief in the instant case upon a cause of action different from the one asserted by him in the former suit, the judgment in the former suit is conclusive only as to such points or questions as were actually in issue or adjudicated therein. And this brings us to the rule on conclusiveness of judgment.

B. Private respondent avers that granting *arguendo* that there is no identity of causes of action, considering that the issue on the unpaid installments has been raised, considered, and passed upon in Civil Case No. 2159(24), such issue can no longer be relitigated anew in Civil Case No. 4293, invoking thereby the doctrine of conclusiveness of judgment.

The doctrine states that a fact or question which was in issue in a former suit, and was there judicially passed on and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein, as far as concerns the parties to that action and persons in privity with them, and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or a different cause of action, while the judgment remains unreversed or unvacated by proper authority.[22] The only identities thus required for the operation of the judgment as an estoppel, in contrast to the judgment as a bar, are identity of parties and identity of issues.[23]

It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issues be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit; but the adjudication of an issue in the first case is not conclusive of an entirely different and distinct issue arising in the second. In order that this rule may be applied, it must clearly and positively appear, either from the record itself or by the aid of competent extrinsic evidence that the precise point or question in issue in the second suit was involved and decided in the first. And in determining whether a given question was an issue in the prior action, it is proper to look behind the judgment to ascertain whether the evidence necessary to sustain a judgment in the second action would have authorized a judgment for the same party in the first action.[24]

Applying these rules to the case at bar, it becomes crystal clear that the doctrine of *res judicata* will still not apply even under the rule on conclusiveness of judgment. To begin with, the fact that there was an unpaid balance equivalent to three installments was never put in issue in Civil Case No. 2159(24). The same was considered or assumed only for purposes of determining the amount of the redemption price. It was never directly admitted, controverted nor litigated therein, it being merely incidental or peripheral to the main issue of whether petitioner

could still exercise his right to repurchase the subject lot by reason of the breach of the prohibition imposed by law. On the other hand, this issue of non-payment of the installments is the primary and sole controversy presented in the subsequent case for rescission. It is thus evident that the two cases involve two different issues. Hence, it would be safe to conclude that neither a "bar by prior judgment" nor "conclusiveness of judgment" would operate upon or adversely affect the second action for rescission.

C. Private respondent insists that petitioner should have included and alleged rescission of contract as a second cause of action in Civil Case No. 2159(24) considering that at the time the first complaint was filed, the breach of the contract of sale was already total, hence the ground for rescission was available and in existence. This very argument, significantly, is in line with petitioner's own assertion that, being based on different causes of action, the action for rescission under Article 1191 of the Civil Code is distinct from the action for reconveyance under Section 119 of the Public Land Act. Accordingly, said action for rescission could have been brought independently of the action for reconveyance since Section 5, Rule 2 of the Rules of Court merely provides:

"Sec. 5. Joinder of causes of action. - Subject to rules regarding jurisdiction, venue and joinder of parties, a party may in one pleading state, in the alternative or otherwise, as many causes of action as he may have against an opposing party (a) if the said causes of action arise out of the same contract, transaction or relation between the parties, or (b) if the causes of action are for demands for money, or are of the same nature and character."

x x x

The rule is clearly permissive. It does not constitute an obligatory rule, as there is no positive provision of law or any rule of jurisprudence which compels a party to join all his causes of action and bring them at one and the same time.[25] Under the present rules, the provision is still that the plaintiff may, and not that he must, unite several causes of action although they may be included in one of the classes specified. This, therefore, leaves it to the plaintiff's option whether the causes of action shall be joined in the same action, and no unfavorable inference may be drawn from his failure or refusal to do so. He may always file another action based on the remaining cause or causes of action within the prescriptive period therefor.

II. We, however, find and so hold that in the controversy now before us the action for rescission has prescribed and should consequently be dismissed on said ground. There can be no dispute that actions based on written contracts prescribe after ten years from the time the right of action accrues.[26] It is elementary that the computation of the period of prescription of any cause of action, which is the same as saying prescription of the action, should start from the date when the cause of action accrues or from the day the right of the plaintiff is violated. This is as it should be.

A cause of action has three elements, namely: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and, (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff. It is only when the last element occurs or takes place that it can be said in law that a cause of action has arisen. Translated in terms of a hypothetical situation regarding a written contract, no cause of action arises until there is a breach or violation thereof by either party.[27] Conversely, upon the occurrence of a breach, a cause of action exists and the concomitant right of action may then be enforced.

In the present case, petitioner's position is that the last three installments which he claims were not paid by private respondent, allegedly fell due on July 1, 1968, July 1, 1969, and July 1, 1970, respectively.[28] Indulging petitioner in his own submissions, therefore, the breach committed by private respondent occurred, at the earliest,

on July 1, 1968 or, at the latest, on July 1, 1970.

Now, even taking the non-payment of the last installment as the basis, an actionable breach of the contract was already committed on said date, hence, as of that time there arose and existed a cause of action for petitioner to file a case for rescission. This remedy could already have been availed of by petitioner for, as earlier discussed, there has been no legal obstacle thereto. Since the ten-year period had started to run on July 2, 1970, petitioner should have filed the action before July 2, 1980 when the prescriptive period expired. Considering that the amended complaint in Civil Case No. 4293, invoking petitioner's right to rescind the contract, was filed only on May 3, 1985, the action therefor has obviously and ineluctably prescribed.

ACCORDINGLY, the instant petition for review on certiorari is hereby DENIED.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Penned by Associate Justice Pedro A. Ramirez, with Associate Justices Vicente V. Mendoza and Cecilio L. Pe, concurring; Annex A, Petition; Rollo, 56.

[2] Original Record, 6-8.

[3] Annex D, Complaint; Original Record, 30.

[4] Annex F, id.; ibid., 36.

[5] Original Record, 92-93.

[6] Ibid., 178.

[7] Yusingco, et al. vs. Ong Hing Lian, etc., et al., 42 SCRA 589 (1971).

[8] 50 C.J.S. 11-13.

[9] Philippine National Bank vs. Barreto, et al., 52 Phil. 818 (1929); Escudero, et al. vs. Flores, et al., 97 Phil. 240 (1955); Navarro vs. Director of Lands, 115 Phil. 824 (1962).

[10] Viray, etc. vs. Marinas, etc., et al., 49 SCRA 44 (1973).

[11] Martinez, et al. vs. Hon. Court of Appeals, et al., 139 SCRA 568 (1985).

[12] 50 C.J.S. 51-53.

[13] Licup vs. Manila Railroad Co., et al., 112 Phil. 203 (1961).

[14] Guanzon, et al. vs. Mapa, 7 SCRA 457 (1963); Insular Veneer Inc., et al. vs. Plan, et al., 73 SCRA 1 (1976).

[15] 50 C.J.S., 66-68.

[16] Sec. 3, Rule 17, Rules of Court.

[17] 50 C.J.S. 65.

[18] Vda. de Cruz, et al. vs. Cariaga, Jr., et al., 174 SCRA 330 (1989).

[19] 50 C.J.S., 120.

[20] Ibid., 100.

[21] Ibid., 91.

[22] Ibid., 141.

[23] Ibid., 144-145.

[24] Ibid., 198-202.

[25] Baldovi vs. Sarte, 36 Phil. 550 (1917).

[26] Article 1144, Civil Code.

[27] Cole, et al. vs. Vda. de Gregorio, et al., 116 SCRA 670 (1982).

[28] Rollo, 49, 301; Original Record, 11.

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