Republic of the Philippines
Supreme Court
Manila

**THIRD DIVISION**

# NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated* **August 26, 2020**, *which reads as follows:*

"**G.R. No. 225715 (*Editha J. Carnacete v. Elizabeth Bulaquena, substituted by her daughter, Margarita Cecilia B. Rillera*).** – This is a Petition for Review on *Certiorari*[1] assailing the Decision[2] dated November 28, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 131077, which reversed and set aside the Decision[3] dated June 28, 2013 of the Regional Trial Court (RTC) of Baguio City, Branch 6. The CA held that respondent Margarita Cecilia B. Rillera (Cecilia) has a better right to posses the residential house and lot covered by TCT No. 018-2012000407 located in Baguio City.

On November 23, 2010, Elizabeth Bulaquena (Elizabeth), representing herself and her co-owner Wilhemina Drummond (Wilhelmina; collectively, plaintiffs] filed a Complaint for Unlawful Detainer[4] before the Municipal Trial Court in Cities (MTCC) of Baguio, Branch 3 against Editha Carnacete (Editha) and any/all persons and/or groups of persons acting for and in her behalf (collectively, defendants). Plaintiffs alleged that they are the registered owners of parcels of land located in #28 Lower P. Burgos, Baguio City, covered by Transfer Certificate of Title (TCT) Nos. T-95898,[5] T-95899,[6] and T-95900.[7] They claimed that their predecessors-in-interest built a residential house for their mother, Dra. Margarita Fernadez (Dra. Margarita), in the lot covered by TCT No. T-95899 (the property). That house was later used as a "staff house" for Dra. Nona Catherine Carnacete (Dra. Nona). Dra. Nona allowed defendants to reside in the premises. Plaintiffs asserted that they and/or their predecessors-in-interest merely tolerated the stay of the defendants out of liberality and for purely humanitarian reasons. Plaintiffs have been paying for the taxes and other

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1 *Rollo*, pp. 9-17.
2 Penned by Associate Jane Aurora C. Lantion, with the concurrence of Associate Justices Vicente E. Veloso and Nina G. Antonio-Valenzuela; id. at 22-33.
3 Penned by Acting Presiding Judge Cecilia Corazon S. Dulay-Archog; id. at 143-148.
4 With Prayer for a Writ of Possession and/or Preliminary Injunction and Temporary Restraining Order; id. at 36-43.
5 Id. at 46.
6 Id. at 47.
7 Id. at 48.

encumbrances over the property, while defendants were neither required to pay the rentals nor the utilities.[8]

On October 13, 2010, plaintiffs sent a letter demanding defendants to vacate the property within seven days from receipt of the notice or until October 20, 2010 but Editha refused.[9] They prayed for defendants to be jointly and severally liable for ₱250,000.00 attorney's fees, ₱50,000.00 litigation and actual expenses, and should they continue to occupy the premises ₱1,000.00 a day as fair rental value or the reasonable compensation for the use of the property until they surrender the same.[10]

In her Answer,[11] Editha alleged that the lots covered by TCT Nos. T-95898, T-95899, and T-95900 were known as "Villa Joven." They were owned by his uncle, Pio Joven (Pio), but were titled in the name of Pio's sister, Salvacion.[12] Editha claimed that Pio was one of her wedding sponsors and that he gifted the property to her in the 1960s. Since then, Pio and his siblings considered the property as belonging to her.[13] She prayed for the dismissal of the complaint for lack of cause of action. She maintained that there is no contract, express or implied, between the parties. Plaintiffs have no superior right of possession. On the contrary, they were the ones doing wrong by arrogating upon themselves the whole Villa Joven, even to the extent of falsifying documents to seize the lots. They were also stopped from questioning the legality of Editha's possession of the property. She first occupied the property in 1962 and repossessed it in 2002 under the color of ownership and lawful possession.[14]

Editha averred that Wilhelmina should be dropped from the case because she has not submitted herself to the jurisdiction of the court by signing and verifying the contents of the complaint. There was also non-compliance with the condition precedent that the case should have been filed first before the barangay for conciliation. The parties belong to the same family, thus under Article 151 of the Family Code, there should have been earnest efforts toward a compromise. However, the complaint did not mention this. In fact, plaintiffs ignored Editha's proposal for amicable discussion. By way of compulsory counterclaim, Editha prayed for the plaintiffs to be solidarily liable for the payment of ₱500,000.00 moral damages, ₱500,000.00 exemplary damages, ₱200,000.00 attorney's fees and litigation cost, and cost of suit.[15]

On June 17, 2011, Wilhelmina died a widow and without any issue. As the surviving sister and the alleged co-owner of the property, Elizabeth

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8 Id. at 38.
9 Id. at 49.
10 Id. at 39-40.
11 Id. at 52-62.
12 Id. at 128.
13 Id. at 54.
14 Id. at 57-59.
15 Id. at 59-61.

remained as party plaintiff in the case. Elizabeth also adjudicated upon herself all the lots in Villa Joven as sole owner under TCT Nos. 018-2012000406, 018-2012000407, and 018-2012000419.[16]

During the preliminary conferences dated April 26, 2012 and June 14, 2012, Elizabeth and Editha admitted that they are first cousins.[17]

**Ruling of the MTCC**

In its Decision[18] dated August 17, 2012, the MTCC dismissed the complaint for lack of cause of action. Defendants' counterclaim for damages was likewise dismissed for lack of basis.

Preliminarily, the MTCC held that filing of the case directly before it without barangay conciliation is warranted because the reliefs prayed for by the plaintiffs include an application for a temporary restraining order or preliminary injunction. It did not find said application entirely baseless or a pretense to avoid the required condition precedent to refer the case to the barangay. It also ruled that since plaintiffs and Editha are merely first cousins, they are not considered as members of the same family under the Family Code. Thus, earnest efforts towards a compromise need not be mentioned in the complaint.[19]

The MTCC held that a case for unlawful detainer sufficiently alleges a cause of action when it recites the following: (1) initially, possession of the property by the defendant was by contract with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and (4) within one year from last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment. The first element is missing in this case.[20]

Plaintiffs failed to present clear and sufficient proof of any particular act constituting the alleged tolerance on their part or the part of Dra. Margarita regarding Editha's occupation of the property. The non-payment of rent does not support the sole conclusion that the stay of Editha was merely through Dra. Margarita's benevolence. Instead, this may support the position of Editha that she possessed the property as an owner. There was also no independent proof that plaintiffs or their predecessors have been paying for the water, electric, and telephone bills of the defendants.[21]

Elizabeth appealed to the RTC.

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16 Id. at 129-130.
17 Id. at 129.
18 Penned by Judge Leody M. Opolinto; id. at 127-142.
19 Id. at 135-136.
20 Id. at 138-139.
21 Id. at 140-141.

## Ruling of the RTC

In its Decision[22] dated June 28, 2013, the RTC affirmed the MTCC's ruling *in toto*. It ruled that tolerance always carries with it "permission" and not merely silence or inaction, for silence or inaction is negligence, not tolerance. Elizabeth failed to prove her supposed acts of tolerance or that of her predecessors' right from the start of Editha's occupation of the property.[23] Since not all the jurisdictional elements of a valid cause of action for unlawful detainer were present, there is no basis for the court to award damages to Elizabeth.[24]

In the meantime, on September 27, 2012, Elizabeth died. She was substituted by her daughter, Cecilia, in the case. [25] Cecilia elevated the case to the CA *via* petition for review under Rule 42.

## Ruling of the CA

In its assailed Decision,[26] the CA reversed the RTC and ruled in favour of Cecilia. It ordered Editha and all persons claiming rights under her to: (1) immediately vacate and surrender peacefully the property covered by TCT No. 018-2012000407; and (2) pay Cecilia ₱1,000.00 per day as reasonable rent for the use and occupation of the premises from the filing of the complaint on November 23, 2010 until they vacate the property. The prayer for attorney's fees, litigation, and actual expenses were denied for lack of sufficient basis.[27]

The CA ruled that the complaint made a clear case for unlawful detainer because it sufficiently alleged that the withholding of possession or the refusal to vacate is unlawful without necessarily employing the terminology of the law. There was an allegation in the complaint that Editha's occupancy of the house and lot is by virtue of Elizabeth and her predecessors' tolerance. Thus, the cause of action sprang from Editha's failure to vacate the premises upon demand on October 13, 2010. Within one year or on November 23, 2010, Elizabeth filed the complaint.[28]

The CA noted that Editha acknowledged in her Answer to the Complaint, particularly in paragraphs 2,[29] 4,[30] 12,[31] 19,[32] and 24,[33] that she

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22 Supra note 3.
23 *Rollo*, p. 145.
24 Id. at 147.
25 Id. at 31.
26 Supra note 2.
27 *Rollo*, pp. 32-33.
28 Id. at 29.
29 Id. at 53; x x x **The properties located at #28 P. Burgos, Baguio City, which is now covered by TCT No. T-95898, TCT No. T-95899, and TCT No. T-95900, are the ancestral** property of the Jovens. It is in fact referred to as Villa Joven since time immemorial (emphasis supplied).
30 Id.; x x x **The late Pio Joven purchased Villa Joven in the late 1940s.** For reasons of convenience however, **he had the properties registered under the name of her sister, Salvacion Joven.** These are registered as TCT No. T-258, TCT No. T-259, and TCT No. T-260 (emphasis supplied).

occupied the property on the permission or acquiescence of Elizabeth's ascendants. Pio advised his cousin, Editha, to stay at the residential house. In 1967, Editha got married, relocated, and established residence in Zamboanga with her husband. In the meantime, Salvacion transferred the ownership of Villa Joven to Dra. Margarita in 1987. In 2002, Editha, together with her daughter, Dra. Nona, went back to Baguio and were allowed anew to reside in Villa Joven. On March 29, 2008, Dra. Margarita executed a Deed of Donation over Villa Joven and ceded it to her daughters, Elizabeth and Wilhelmina. When Wilhelmina died, the titles over Villa Joven were cancelled and consolidated in the name of Elizabeth. Thereafter, when Elizabeth died, appellant Cecilia inherited Villa Joven.[34]

The CA concluded that regardless of the length of time, it cannot be denied that Editha and Dra. Nona's stay in the property was by virtue of the Joven's benevolence and tolerance. Without any contract, Editha was bound by an implied promise to vacate the property upon demand, failing which the summary action for ejectment is the proper remedy against her.[35]

The claim of Editha that the Joven Family had always treated her as a co-owner of the property was not deemed to be enough to offset Elizabeth's right as the registered owner of the property. When a property is registered under the Torrens system, the registered owner's title to the property is presumed legal and cannot be collaterally attacked in an action for unlawful detainer. The CA clarified that its adjudication on ownership is merely provisional and would not bar or prejudice any action which may be instituted by Editha involving the title of the property. The CA ruled upon the issue of ownership since it is inextricably linked to the determination of the issue of possession.[36]

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30 Id.; x x x **The late Pio Joven purchased Villa Joven in the late 1940s.** For reasons of convenience however, **he had the properties registered under the name of her sister, Salvacion Joven.** These are registered as TCT No. T-258, TCT No. T-259, and TCT No. T-260 (emphasis supplied).

31 Id. at 54; x x x **In the 1960s, the late Pio Joven x x x advised the defendant [referring to Editha] to occupy the subject house and** lot as his bequest to the defendant, and told her that this will be for the use of the defendant and her family. Since then, the Joven family always treated the subject house and lot as "belonging" to the defendant (emphasis supplied).

32 Id. at 56; x x x Defendant and her daughter Kookoo (Dr. Nona Catharina Natividad Joven Carnacete) stayed at the first floor of the former residence of the late Pio Joven, the same residence where Margarita Fernandez stays until today. The subject house and lot was then occupied by the former administrator of the hospital so the defendant cannot occupy the same. However, **when the hospital administrator's employment was terminated, Margarita Fernandez told the defendant and her daughter to occupy the subject house and lot** because after all, this was given to them by the late Pio Joven (emphasis supplied).

33 Id. at 57; x x x [When] **the late Salvacion Joven transferred the properties comprising of Villa Joven to Margarita Fernandez in 1987**, this was without any consideration, and only for the purpose of convenience since Margarita Fernandez was the person primarily in charge with the school and the hospital. This transfer, however, was never intended to take the property away from its intended use, which is for the benefit of the whole Joven family. The transfer also did not intend to take the subject house and lot from the defendant x x x.

34 Id. at 31.

35 Id.

36 Id. at 32.

Editha filed a Motion for Reconsideration,[37] while Cecilia filed a Motion for Amendment of Decision. In its Resolution[38] dated July 8, 2016, the CA denied reconsideration but granted the amendment of the third paragraph of the dispositive portion of its Decision. It clarified that ₱1,000.00 **per day** is the reasonable rental that Editha and all persons/groups claiming under her shall pay from the filing of the complaint until they vacate the premises.[39] Aggrieved, Editha filed the present petition before Us.

**Proceedings before the Court**

In her petition, Editha alleged that the MTCC has no jurisdiction over the complaint because the allegations did not make a case for unlawful detainer but a case for ownership.[40] Elizabeth failed to establish the element of tolerance. None among Dra. Margarita, Elizabeth, or Cecilia could have given Editha a permission to live in the property because it was Pio who granted her stay; not to mention that Pio bequeathed the property to her.[41] Editha also claimed that the transfers of the titles of the lots of Villa Joven to Dra. Margarita, to Elizabeth, and to Cecilia were replete with fraud. She learned of the malicious transfers when the unlawful detainer case was filed against her.[42]

In her Comment,[43] Cecilia countered that Editha and Dra. Nona were merely allowed by her mother Elizabeth and her aunt Wilhelmina to stay in the property. The lot where the residential building stands was declared in the name of her grandmother, Dra. Margarita, and now in the name of Elizabeth for tax purposes.[44] Cecilia argued that Editha failed to substantiate her claim that the property was previously owned by Pio. The titles of the three parcels of land were registered in the name of Salvacion, which was later sold to Dra. Margarita. The latter subsequently donated the lots to Elizabeth and Wilhelmina. Since Pio was not the owner of any of the lots, he cannot give the same to anyone. Nor can he grant Editha permission to stay in the premises. Furthermore, Cecilia asserted that the residential building did not yet exist in the 1960s. It was built by Wilhelmina and Elizabeth in the 1990s when Dra. Margarita became the owner of the lots. Editha's claim of ownership over the property was a mere afterthought. She admitted in her reply to the demand to vacate that she and Dra. Nona entered the property only in 2002. She also did not question the transfer of title and ownership in the names of Dra. Margarita, Wilhelmina, and Elizabeth.[45]

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37 Id. at 217-227.
38 Penned by Associate Justice Jane Aurora C. Lantion, with the concurrence of Associate Justices Samuel H. Gaerlan (now a Member of this Court) and Nina G. Antonio-Valenzuela; id. at 280-283.
39 Id. at 281-282.
40 Id. at 9.
41 Id. at 14.
42 Id.
43 Id. at 268-274.
44 Id. at 269.
45 Id. at 271-272.

## Issues

The issues in this case are: (1) whether the MTCC has jurisdiction over the case; and (2) whether the CA erred in finding that Elizabeth has a better right to possess the subject house and lot.

## Ruling of the Court

The petition is bereft of merit.

Jurisdiction over the subject matter of an action is determined from the allegations of the initiatory pleading. The court must interpret and apply the law on jurisdiction in relation to the averments of ultimate facts in the complaint or other initiatory pleading regardless of whether or not the plaintiff or petitioner is entitled to recover upon all or some of the claims asserted.[46] Here, Editha claimed that the MTCC has no jurisdiction because the complaint filed before it does not make a case for unlawful detainer, the issue involved being not of possession but of ownership. We disagree.

Case law teaches that a complaint for unlawful detainer must allege the following: (1) the defendant originally had lawful possession of the property, either by virtue of a contract or by tolerance of the plaintiff; (2) the defendant's possession of the property eventually became illegal upon notice by the plaintiff to the defendant of the expiration or the termination of the defendant's right of possession; (3) the defendant thereafter remained in possession of the property and thereby deprived the plaintiff the enjoyment thereof; and (4) the plaintiff instituted the action within one year from the unlawful deprivation or withholding of possession.[47] The complaint satisfied all these requirements.

The complaint alleged that Editha and Dra. Nona's stay in the property was out of Elizabeth's and Wilhelmina's tolerance and liberality and for purely humanitarian reasons. Editha and Dr. Nona were not required to pay rent and to pay the utility bills for the use of the property. On October 13, 2010, they received a letter from Elizabeth and Wilhelmina, demanding that they vacate the property, but they refused to surrender possession of the same. Hence, on November 23, 2010, the complaint was filed against them.

That Editha alleged in her Answer to the Complaint that she owned the property is of no moment. Her claim of ownership does not render the ejectment suit either an *accion publiciana* or *accion reivindicatoria.* The suit remains an *accion interdictal*, a summary proceeding that can proceed independently of any claim of ownership.[48] Since the complaint is for

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46 *Penta Pacific Realty Corp. v. Ley Construction and Development Corp.*, 747 Phil. 672, 685 (2014).
47 Id. at 687-688.
48 Id. at 690.

unlawful detainer, the MTCC has exclusive original jurisdiction pursuant to Section 33(2) of Batas Pambansa Blg.129.[49]

We also agree with the CA that Elizabeth has a better right to possess the property. Editha's stay in the property was by mere tolerance of Elizabeth and her predecessors. Editha herself acknowledged this in her Answer to the Complaint.[50] In 2002, she and Dra. Nona went back to Baguio and was told by Dra. Margarita to stay in the property. Assuming that the property was gifted to her by Pio, such oral donation is null and void. Under Article 749 of the Civil Code, a public instrument must be executed for a donation of an immovable property to be valid. In addition, the record is bereft of showing that Pio is the registered owner of the property, so it is questionable if he has the authority to give it away. The title of the property is in the name of Pio's sister, Salvacion. In 1987, Salvacion sold the property to Dra. Margarita. Consequently, it was Dra. Margarita who had the authority to permit the stay of Editha and Dra. Nona in 2002.[51]

Editha argued that there are pending actions between her and Cecilia, which question the validity of the latter's titles over Villa Joven. However, this argument is a collateral attack on Cecilia's title, which is not allowed in an unlawful detainer case. The sole issue in an unlawful detainer case is possession *de facto* rather than possession *de jure*. It does not even matter if a party's title to the property is questionable. Where the parties to an ejectment case raise the issue of ownership, the courts may pass upon that issue to determine who between the parties has the better right to possess the property. However, where the issue of ownership is inseparably linked to that of possession, as in this case, adjudication of the ownership issue is not final and binding, but merely for the purpose of resolving the issue of possession. The adjudication of the issue of ownership is only provisional, and not a bar to an action between the same parties involving title to the property.[52]

Meanwhile, We find that the CA erred in awarding Cecilia ₱1,000.00 per day for the reasonable use of the property. The CA did not give any ratiocination as to how it arrived at said amount, other than that it was prayed for by Elizabeth in her complaint before the MTCC. Under Section

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49 Section 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in civil cases.* – Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:

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(2) Exclusive original jurisdiction over cases of forcible entry and unlawful detainer: Provided, That when, in such cases, the defendant raises the question of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.

50 *Rollo*, 52-62.

51 Id. at 130-131.

52 *Sps. Santiago v. Northbay Knitting, Inc.*, 820 Phil. 157, 166 (2017).

17,[53] Rule 70 of the 1997 Rules of Court, as amended, the trial court is empowered to award reasonable compensation for the use and occupation of the premises sought to be recovered in an unlawful detainer and forcible entry cases if it finds that the allegations in the complaint are true. This reasonable compensation partakes the nature of actual damages. Thus, the court must fix the amount of rent based on the evidence adduced by the parties.[54] Rental value refers to "the value as ascertained by proof of what the property would rent or by evidence of other facts from which the fair rental value may be determined."[55] Reasonable amount of rent in suits for ejectment cases must be determined not by mere judicial notice but by supporting evidence.[56]

Thus, in *Sps Fahrenbach v. Pangilinan*,[57] We affirmed the CA's remand of the case to the RTC for the determination of the proper amount of monthly rentals that therein petitioners should pay respondent. In fixing the rental in that case, the RTC failed to cite any document showing the assessment of the lot, any increase in the realty taxes, and the prevailing rental rate in the area.[58]

Accordingly, since there is no evidence on record that could point Us to the reasonable compensation for the use of the property, We remand the case to the RTC for determination of the proper amount of reasonable rental due to Cecilia.

In *Muller v. PNB*,[59] We held that the "the amount demandable and recoverable from a defendant in ejectment proceedings regardless of its denomination as rental or reasonable compensation or damages, flows from the detainer or illegal occupation of the property involved and x x x is merely incidental thereto."[60] Hence, the RTC shall compute the rental due from the date of Elizabeth's extrajudicial demand for Editha to vacate the property or on October 13, 2010. This is when Editha's possession of the property became unlawful. The total rent due shall earn interest at the rate of six percent *per annum* from October 13, 2010 until the judgment in this case becomes final and executory,[61] and legal interest of six percent *per annum* thereafter, until full payment.[62]

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53 Section 17. *Judgment.* – If after trial court finds that the allegations of the complaint are true, it shall render judgment in favor of the plaintiff for the restitution of the premises, the sum justly due as arrears of rent or as reasonable compensation for the use and occupation of the premises, attorney's fees and costs. If a counterclaim is established, the court shall render judgment for the sum found in arrears from either party and award costs as justice requires.

54 *Sps Booc v. Five Star Marketing Co., Inc.* 563 Phil. 368, 381 (2007).

55 *Josefa v. San Buenaventura*, 519 Phil. 45, 58 (2006), citing *Asian Transmission Corp. v. Canlubang Sugar Estates,* 457 Phil. 260, 288 (2003).

56 *Sps. Fahrenbach v. Pangilinan,* 815 Phil. 696, 710 (2017).

57 815 Phil. 696 (2017).

58 Id.

59 G.R. No. 215922, October 1, 2018.

60 Id., citing Francisco, Rules of Court Annotated, Vol. III, 2nd Ed., p. 855, citing *Mapua v. Suburban Theaters, Inc.* 87 Phil. 358, 365 (1950).

61 *Sps. Booc v. Five Star Marketing Co., Inc.* supra note 54 at 383 (2007).

62 See *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

**WHEREFORE,** the petition is **DENIED.** The Decision dated November 28, 2014 and the Resolution dated July 8, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 131077 are **AFFIRMED with MODIFICATION** in that:

(1) The amount of rent or reasonable compensation for the use of the property shall be computed by the Regional Trial Court of Baguio City, Branch 6 on **REMAND**; and
(2) The rent due shall earn interest at the rate of six percent (6%) *per annum* from October 13, 2010 until finality of this Resolution. Thereafter, the legal interest rate of six percent (6%) *per annum* shall be imposed after finality of this Resolution until full payment.

**SO ORDERED."**

By authority of the Court:

**MISAEL DOMINGO C. BATTUNG III**
*Division Clerk of Court*
5/12/21

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