

**IN THE CHANCERY COURT FOR TWENTIETH JUDICIAL DISTRICT
OF TENNESSEE**

*****)
JACK PELHAM, and)
KAY PELHAM,)
)
Plaintiffs,)
)
vs.) Case No. 05-2259-III
)
THE NASHVILLE CHURCH, INC.,)
INTERNATIONAL CHURCHES OF)
CHRIST, INC., HOPE WORLDWIDE, LTD.,)
and CENTRAL AND SOUTH AMERICA)
WORLD SECTOR, INC.,)
)
Defendants.)
*****)

**PLAINTIFFS' RESPONSE TO MOTION TO DISMISS BY DEFENDANT
CENTRAL AND SOUTH AMERICA WORLD SECTOR, INC.**

Come now the Plaintiffs, JACK PELHAM and KAY PELHAM, by and through their undersigned counsel, and for response to the Motion to Dismiss filed herein by the Defendant, CENTRAL AND SOUTH AMERICA WORLD SECTOR, INC., would state as follows:

INTRODUCTION

The Plaintiffs, Jack Pelham and wife, Kay Pelham, bring this action seeking equitable relief in the form of restitution and a constructive trust, as well as for compensatory damages arising out of the Defendants' widespread pattern of fraud, misrepresentation and deceit in the solicitation of funds through coercion and false advertising. Specifically, the Plaintiffs allege that during the time the Plaintiffs were members of these church organizations, the Defendants, The Nashville Church, Inc., International Churches of Christ, Inc., Central and South America World

Sector, Inc. and Hope Worldwide, Ltd., engaged in the use of cult-like tactics in order to gain compliance with, and blind obedience to, coercive techniques such as: manipulation, peer pressure, placing guilt on parishioners who failed to strictly adhere to their policies and practices; group criticism of the slightest wavering or questioning, or resistance, or objection; restricting and controlling communication between its members; and manipulating them into “tithing” and making contributions under the guises of charitable benevolence and of “special missions contributions.” Plaintiffs further allege that the Defendants falsely represented that funds which they solicited from the Pelhams would be allocated exclusively either to international humanitarian endeavors, or to the funding of missionary church “plantings” worldwide. These contributions were instead treated by the Defendants as “unrestricted funds” and diverted by them for the personal inurement and benefit of several high-ranking employees and officers of the Defendant corporations.

The Defendant, Central and South American World Sector (“CSA”) has moved to dismiss the Complaint under Rules 9.02 and 12.02 Tenn.R.Civ.P. on the grounds that the complaint fails to set forth with sufficient particularity the factual bases for the Plaintiffs’ fraud claims. It also asserts that the Complaint fails to state a claim for negligent misrepresentation and civil conspiracy. The Plaintiffs have since filed a motion for leave to amend their complaint in order to plead with greater detail the facts surrounding the Defendants’ fraudulent scheme. (See Plaintiffs’ Motion To Amend and Proposed Amended Complaint filed on October 24, 2005). In their amended complaint the Plaintiffs not only address the Rule 9.02 concerns raised by TNC, but also describe in detail the inter-relationship between the various defendants, and how they each participated in an enterprise and scheme to solicit money from the Plaintiffs, as well as other

unsuspecting members, under false pretenses.¹ Plaintiffs respectfully submit that this amended complaint complies with the notice pleading requirements of Rules 8 and 9.02 Tenn.R.Civ.P, and cures the sufficiency of pleading defenses raised by CSA. It also clearly states claims for fraud, civil conspiracy and conversion. Therefore, the Plaintiffs should be granted leave to file their proffered amended complaint before the defenses asserted by this Defendant are considered.

PARTIES

The Plaintiffs Jack and Kay Pelham are husband and wife and are adult citizens and residents of Red Boiling Springs, Tennessee. In October of 1998, Plaintiffs Jack and Kay Pelham (then Kay Davis) became members of The Nashville Church, Inc., having transferred their memberships from other ICOC congregations—that is from, The South Florida Church of Christ and The New York City Church of Christ, respectively. Upon becoming members of TNC, the Pelhams retained their existing membership in the International Churches of Christ, Inc. (“ICOC”).

The Defendant, The Nashville Church, Inc., (“TNC”) is a Tennessee corporation and has its corporate headquarters at 2416 Music Valley Drive, Nashville, Tennessee 37214. During the relevant time period that the Pelhams were members of TNC, it was a member church of the International Churches of Christ, Inc., as well as a member of the Central and South America World Sector, Inc. It also served as a conduit for the solicitation of funds by the Defendant

¹ The amended complaint omits the Plaintiffs’ claim for negligent misrepresentation and substitutes in its place a claim for the intentional tort of conversion.

HOPE Worldwide, Ltd., which was itself an integrated auxiliary of the International Churches of Christ, Inc.

The Defendant, International Churches of Christ, Inc., (“ICOC”) is a California corporation, and has its corporate headquarters at 3731 Wilshire Blvd., Suite 800, Los Angeles, California 90010. This Defendant served as the umbrella organization for several of its “affiliates” or “integrated auxiliaries” which were tied together by virtue of “Affiliation Agreements” and the corporate policy guidelines of ICOC. As shown in the Amended Complaint, ICOC exerted considerable control and influence over the management and operation of TNC, as well as the other corporate defendants, through its ICOC Policies and agreements with them.

The Defendant, Central and South America World Sector, Inc., (“CSA”) is a Florida corporation founded by ICOC, and maintains its corporate offices at 10 Goodyear Dr., Irvine, California 92618. This Defendant was one of many “world sector corporations” established by ICOC, and was the one which exercised hierarchical control over TNC.

The Defendant, Hope Worldwide, LTD., is a Delaware not for profit limited liability company founded by ICOC which maintains its corporate headquarters at 353 W. Lancaster Avenue, Wayne, Pennsylvania 19087. During the relevant time period, this defendant also maintained a local affiliate in Tennessee known as HOPE Worldwide of Tennessee, Inc.

FACTUAL ALLEGATIONS

The Plaintiffs adopt by reference herein as fully as though set forth verbatim the allegations contained in their proposed amended complaint and submit that these should be taken as true for the purposes of the Defendants' motion.

ARGUMENT

I. STANDARD UNDER RULE 12.02. WHEN THERE IS A MOTION TO AMEND.

Pursuant to Tenn. R. Civ. P 12.02(6), a motion to dismiss for failure to state a claim on which relief may be granted challenges the legal sufficiency of the complaint, not the strength of the plaintiff's proof. *Trau-Med of America, Inc. v. Allstate Ins. Co.*, 71 S.W.2d 691 (Tenn.2002). When considering a motion to dismiss, the court should construe the allegations set forth in a complaint liberally with all facts presumed to be true and the plaintiff given the benefit of all reasonable inferences. *Id.*, at 696-7, 71 S.W.2d 691. A motion to dismiss for failure to state a claim should not be granted unless it is clearly shown that the plaintiff can prove no set of facts supporting his claim that would warrant relief. *Id.*

The Plaintiffs in this case have filed a Motion To Amend and have supported their motion with a proposed amended complaint. Given the present procedural posture of this case, the Defendants' motion to dismiss is not considered a responsive pleading, and the Plaintiffs should be allowed to file their amended complaint under Rule 15 Tenn.R.Civ.P. :

A motion to dismiss for the failure to state a claim is the equivalent of a demurrer under our former practice. *Cornpropst v. Sloan*, 528 S.W.2d 188 (Tenn.1975). When the court granted the demurrer, the original action was at an end. 61 Am.Jur.2d *Pleading*, § 283, p. 693. Yet, the plaintiff was almost universally

allowed to amend after the demurrer had been sustained. *Id.*; *see also* Caruthers, *History of a Lawsuit*, § 198, pp. 243-244 (8th ed., 1963). Our modern rules also recognize that leave to amend should be freely given. Rule 15.01, Tenn.R.Civ.P. Thus, when the court grants a motion to dismiss for failure to state a claim, only extraordinary circumstances would prohibit the plaintiff from exercising the right to amend its complaint. Since a Tenn. R. Civ. P. rule 12.02(6) motion is not deemed to be a responsive pleading within the meaning of Tenn. R. Civ. P. rule 15, Appellant should have been allowed to amend his complaint, and the trial court erred in denying the Motion to Amend.

Richmond Country Club v. CRC Equities, Inc., 832 S.W.2d 554 (Tenn.Ct.App.1991).²

II. THE AMENDED COMPLAINT SATISFIES THE PARTICULARITY REQUIREMENT UNDER RULE 9.02 TENN.R.CIV.P.

A complaint which alleges fraud requires a somewhat heightened pleading standard. Rule 9.02, Tenn. R. Civ. P. requires that "the circumstances constituting fraud or mistake shall be stated with particularity." *Strategic Capital Resources, Inc. v. Dylan Tire Industries, LLC.*, 102 S.W.3d 603 (Tenn.Crt.App. 2002). There is a companion rule set forth in Rule 8.06 that all pleadings shall be construed so as to do substantial justice. *See Ezell v. Graves*, 807 S.W.2d 700 (Tenn.Ct.App.1990); *cf. Sullivant v. Americana Homes, Inc.*, 605 S.W.2d 246 (Tenn.Ct.App.1980). In *City State Bank v. Dean Witter Reynolds*, 948 S.W.2d 729 (Tenn.Ct.App.1996), the court found the complaint sufficient where it "specifically identifies the time and place of each alleged false

² The Court's ruling in *Richmond Country Club* has been routinely applied in cases in which a motion to dismiss is met with a motion to amend the complaint. *See, accord, Demers v. Whittenberg*, 2004 WL 1196109 (Tenn.Crt.App., May 27, 2004)(Since a Tenn. R. Civ. P. rule 12.02(6) motion is not deemed to be a responsive pleading within the meaning of Tenn. R. Civ. P. rule 15, Appellant should have been allowed to amend his complaint, and the trial court erred in denying the Motion to Amend.)

representation, and identifies the manner in which each representation was deemed to have been fraudulent." 948 S.W.2d at 738.

In their 26 page Amended Complaint, the Plaintiffs set forth in specific detail the factual circumstances surrounding the Defendants' pattern of fraudulent conduct spanning over a period of three years, and how a veritable alphabet soup of overlapping corporate acronyms were used to conceal and obfuscate their misappropriation of charitable donations. Specifically, the Plaintiffs have set forth with particularity facts which, if taken as true, would support their claim that the Defendants were each actors in a common enterprise designed to mislead innocent charitable givers, including the Pelhams. The gravamen of the Amended Complaint is that through their "affiliation agreements" and specific acts of fraud the Defendants are liable under a claim for civil conspiracy.

Taking the allegations of the amended complaint as true, the Plaintiffs have alleged facts which support a finding that each of the defendants had the intent to accomplish their common purpose of soliciting funds under false pretenses, and that each knew of the other's intent. *Dale*, 186 Tenn. at 90, 208 S.W.2d at 353-54. The agreement "need not be formal, the understanding may be a tacit one, and it is not essential that each conspirator have knowledge of the details of the conspiracy." *Id.* Finally, "it is [a] basic principle that each conspirator is responsible for everything done by his confederate which the execution of the common design makes probable as a consequence"; in other words, each conspirator is liable for the damage caused by the other. *Id.* 186 Tenn. at 90-91, 208 S.W.2d at 354;. . . *Brown v. Birman Managed Care, Inc.*, 42 S.W.3d 62, 67 (Tenn.2001).

In the instant case the Plaintiffs have alleged with specificity in their Amended Complaint that the Defendants have accomplished this scheme through an enterprise consisting of various interlocking corporations under the umbrella of ICOC and its various “affiliates” and “integrated auxiliaries.” (Amended Complaint, ¶ 10). They further allege that throughout the course of the Plaintiffs’ membership in TNC, the Defendants used an elaborate enterprise consisting of various corporations having overlapping boards of directors, employees, and interlocking policies all of which were woven together through what ICOC referred to as “Affiliation Agreements.” *Id.* at ¶ 21. See also Exhibit A to Amended Complaint showing the inter-relationships of the Defendants through common board members and personnel.

It is noteworthy that CSA has not moved this Court to dismiss for lack of personal jurisdiction. As shown from the Amended Complaint, it had continuous and systematic contacts with the State of Tennessee during the relevant time period. Plaintiffs submit that under the rationale in *Chenault v. Walker*, 36 S.W.3d 45 (Tenn.2001), the same agency principles which permit a finding of personal jurisdiction against a non-resident co-conspirator allow the actions of CSA’s agent in the State of Tennessee, to wit: The Nashville Church, to be imputed to this Defendant. Indeed, the very language of Tennessee’s long arm statute permit such a conclusion. Tenn.Code Ann. § 20-2-214(c) provides: “Any such person shall be deemed to have submitted to the jurisdiction of this state who acts in the manner above described through an agent or personal representative.”

With regard to CSA, the Plaintiffs have made the following sworn allegations in their Amended Complaint:

1. The Defendant, Central and South America World Sector, Inc., (“CSA”) is a Florida corporation founded by ICOC, and at all times relevant was an **integrated auxiliary** of ICOC. It maintains its corporate offices at 10 Goodyear Dr., Irvine, California 92618. (Amended Complaint at ¶ 5).³

2. In furtherance of this elaborate, interlocking enterprise, and as a means of exerting domination and control over its local church congregations, ICOC divided the world into geographic sectors and set up church associations which were called “world sector corporations” to serve as a diocese-like enterprise for each sector of the world. Local congregations which were located in a particular geographic world sector became members of this world sector church association. Under this scheme, the geographic region which encompassed Tennessee, and thus included TNC, was governed under a world sector known as Central and South America World Sector, Inc. (“CSA”). (Amended Complaint at ¶ 24).

3. CSA was at all times an affiliate or “integrated auxiliary” of ICOC, and, during the time that Plaintiffs were members, TNC was itself a member of this world

³ The Defendant ICOC has identified itself as a “church”. See Amended Complaint at ¶ 4. It has further identified CSA as an “integrated auxiliary” of this church. The term “integrated auxiliary” is one used in IRS nomenclature to identify accessory organizations which by their nature are integral and inseparable from the parent church organization and thus qualify under the umbrella church’s tax exemption. As stated by the Sixth Circuit Court of Appeals in *Southern Baptist Children’s Home, Inc. v. United States*, 790 F.2d 534 (6th Cir. 1986), the Internal Revenue Code as amended in 1969 did not define the terms “church” or “integrated auxiliary.” On January 4, 1977, the IRS defined the term “integrated auxiliary” of a church as that term was employed in I.R.C. § 6033(a)(2)(A)(i) through its newly enacted regulation, 26 C.F.R. § 1.6033-2(g)(1)(i) & (g)(5), Treasury Regulation (Treas.Reg.) § 1.6033-2(g)(1)(i) & (g)(5). Under this definition, an integrated auxiliary of a church is an organization that is exempt under IRC § 501(c)(3), is affiliated with a church, and whose principal activity is exclusively religious. Applying this broad definition, the Sixth Circuit held in *Southern Baptist Children’s Home* that the orphanage was an integrated auxiliary of the Southern Baptist Church and thus exempt from filing informational returns. The ICOC’s identification of CSA as one of its integrated auxiliaries is a representation to the Internal Revenue Service that it regards this organization as an integral and inseparable arm in the accomplishment of its religious goals and mission.

sector corporation. CSA was a subsidiary of ICOC,, and was also classified by ICOC as an association of churches. In the following excerpt from ICOC Policy, the word “Member” refers to member church and, during the relevant timeframe, included TNC:

Member shall continue to issue ministerial or ordination credentials to its own ministers. However, (*World Sector*) retains authority to designate the Lead Evangelist of Member and to discipline and/or withdraw the ministerial credentials of any clergy of Member for ecclesiastical reasons. Moreover, (*World Sector*) **and Member agree that ICC retains ultimate authority through the ICC Ecclesiastical Council, to discipline and/or withdraw the ministerial credentials of any clergy of Member.** In the event that an ordained minister moves from one Local Church to another, or from one World Sector Association of Churches to another for ministry purposes, the minister shall remain ordained and no new ordination will be necessary, so long as the minister remains in the CHURCH.

(Amended Complaint at ¶ 25).

4. Throughout the period that the Plaintiffs were members of TNC, this Tennessee church was also required to submit to the leadership of its respective world sector corporation, in this case the Central and South American World Sector (CSA). The CSA, like all other world sector corporations, were subsidiaries of ICOC and required under ICOC Policy 02.01.04 to “operate pursuant to applicable ICOC Administrative Policies and Procedures.” (Amended Complaint at ¶ 26).

5. Acting pursuant to its authority under the aforementioned and other ICOC policies, in 1998 ICOC appointed and designated Doug Lambert to a position of leadership over TNC as its “Lead Evangelist”. Mr. Lambert resided in Tennessee and, during the Plaintiffs’ membership, served as an official representative of both ICOC and its World Sector Corporation, CSA, and exercised supervisory authority capacity in the day-to-day operation of TNC. (Amended Complaint at ¶ 27).

6. In addition, as Lead Evangelist for ICOC and CSA, Doug Lambert exercised broad overarching authority over the management of TNC, as demonstrated by the

following ICOC policies which were in effect during the period of the Plaintiffs' church membership:

02.04.02.02 Accounting Manager (AM)

The AM is responsible for the administration of all aspects of cash management for the church. The AM shall be appointed by the CEO or CFO, **subject to approval by the Lead Evangelist**. The AM shall report directly to the CEO or CFO on all administrative matters. The AM shall submit to the Lead Evangelist on all spiritual and ecclesiastical matters. The AM must be a Certified Public Accountant (or have adequate experience to demonstrate similar competence) with adequate business experience to manage the financial and managerial accounting needs of the church. (From ICOC Administrative Policies, 2001)

02.04.02.03 Human Resources Manager (HRM)

The HRM is responsible for all aspects of the management of Human Resources systems and procedures for the church, including policy implementation, employment, wage and salary administration, and employee safety. The HRM shall be appointed by the CEO or CFO, **subject to approval by the Lead Evangelist**. The HRM shall report directly to the CEO or CFO on all administrative matters. The HRM shall submit to the Lead Evangelist on all spiritual and ecclesiastical matters. The HRM must have adequate experience and training to manage the Human Resources needs of the church. (From ICOC Administrative Policies, 2001)

02.04.02.04 Information Systems Manager (ISM)

The ISM is responsible for the management of all information systems of the church. The ISM shall be appointed by the CEO or CFO, subject to approval by the Lead Evangelist. The ISM shall report directly to the CEO or CFO on all administrative matters. The ISM shall submit to the Lead Evangelist on all spiritual and ecclesiastical matters. The ISM must have sufficient experience in information systems to manage the information systems needs of the church. (From ICOC Administrative Policies, 2001)

(Amended Complaint at ¶ 29).

7. Acting through its Lead Evangelist, in this case Doug Lambert, as well as various affiliated enterprises including one known as the Kingdom News Network, (which ICOC referred to as one of its "integrated auxiliaries"), ICOC routinely solicited contributions in the State of Tennessee from its local ICOC churches, including TNC. These contributions included gifts and donations made by the Pelhams during the period of their membership in TNC and ICOC. (Amended Complaint at ¶ 30).

8. In addition, during the period that the Pelhams were members of TNC and ICOC, the Defendants ICOC, CSA and HOPE all regularly solicited and received

donations from their local churches within the State of Tennessee through the collection of what were referred to as “management fees”. These fees were based on the average weekly offerings received by the local member church. (Amended Complaint at ¶ 32).

9. The funds which were solicited by TNC and ICOC within the State of Tennessee were also funneled to the Defendant, Central and South America World Sector, Inc., (“CSA”), an affiliate of ICOC. During a CSA conference in April of 2003, CSA leadership made the following admission of the miscommunications within ICOC and its member churches with regard to the use of funds:

The CSA Leadership has failed to communicate adequately with the churches in our group especially about the finances and administration of special contributions. Peter Garcia and Jaime De Anda sincerely apologize for this lack of sensitivity to the continual sacrifices of the individual churches and members. Their failure to provide an effective communication channel caused many disciples to feel excluded and disconnected from the administration and finances of the CSA World Sector. In particular, they express their sorrow that some members have been under the impression that all the money collected through their churches' special contributions was distributed directly to Latin America. Although the majority of the CSA contributions were sent directly to the mission field, a percentage was also used to support the administrative and ministry oversight of the world sector.

(Amended Complaint at ¶ 42).

10. During the time Plaintiffs were members of TNC, the World Sector Corporations dictated to the local congregations how many “multiples” would be required from the local congregation for the “Special Missions Contribution” for that year. The local congregation was then free to add additional “multiples” to this number if they so desired. The local congregations were advised that anything over the stated “goal” was available for local ministry use. (Amended Complaint at ¶ 48).

11. At regular intervals during the period of the Plaintiffs' membership in TNC, this Defendant's leaders falsely misrepresented to the Pelhams that the amount imposed by

CSA as their Special Mission Contribution “goal” was being used exclusively for Latin American missions. (Amended Complaint at ¶ 49).

12. In 2003, after the misallocation of funds within ICOC, HOPE and CSA came to light, the CSA Leadership issued an apology letter in which it conceded the following: “In particular, they express their sorrow that some members have been under the impression that all the money collected through their churches' special contributions was distributed directly to Latin America.” CSA further resolved to change their previous compensation policy to the following: “Financial support of CSA employees will be prorated according to the percentage of their work that is focused directly on Latin American missions.” (Amended Complaint at ¶ 50).

13. This CSA apology letter was signed by both Doug Lambert (as Lead Evangelist for TNC) and Woody Rowe (Elder/Administrator of TNC and Delegate to CSA and member of the board of CSA). Plaintiffs therefore allege that these individuals were well aware of the misappropriation and hence are complicit, along with the other CSA Leaders, in the conversion of funds, and the fraud perpetrated upon the Plaintiffs. (Amended Complaint at ¶ 52).

14. Plaintiffs further allege that this misallocation was not merely the result of “inadequate communication”, as suggested in CSA's apology letter. Rather, it was the result of the deliberate representations made by CSA and church leadership made during the time Plaintiffs were members of TNC. (Amended Complaint at ¶ 53).

Far from being mere conclusory allegations, the foregoing excerpts from the verified amended complaint are fact specific and rely in large part, on information generated by the Defendants themselves for their authenticity.

III. THE PLAINTIFFS HAVE PLEAD WITH SUFFICIENT PARTICULARITY TO SATISFY RULE 9.02 WITH REGARD TO THEIR CIVIL CONSPIRACY CLAIM.

A civil conspiracy is a "combination between two or more persons to accomplish by concert an unlawful purpose, or to accomplish a purpose not in itself unlawful by unlawful means." *Beaudreau v. Larry Hill Pontiac/Oldsobile/GMC*, 160 S.W.3d 874 (Tenn.Crt.App. 2004)(quoting *Dale v. Thomas H. Temple Co.*, 186 Tenn. 69, 208 S.W.2d 344, 353 (1948)); *Chenault v. Walker*, 36 S.W.3d 45, 52 (Tenn.2001).

Each conspirator must have the intent to accomplish this common purpose, and each must know of the other's intent. *Dale*, 186 Tenn. at 90, 208 S.W.2d at 353-54. The agreement "need not be formal, the understanding may be a tacit one, and it is not essential that each conspirator have knowledge of the details of the conspiracy." *Id.* Finally, "it is [a] basic principle that each conspirator is responsible for everything done by his confederate which the execution of the common design makes probable as a consequence"; in other words, each conspirator is liable for the damage caused by the other. *Id.* 186 Tenn. at 90-91, 208 S.W.2d at 354;. . . *Brown v. Birman Managed Care, Inc.*, 42 S.W.3d 62, 67 (Tenn.2001).

In the instant case the Plaintiffs have alleged with specificity in their Amended Complaint that the Defendants have accomplished this scheme through an enterprise consisting of various interlocking corporations under the umbrella of ICOC and its various "affiliates" and "integrated

auxiliaries.” (Amended Complaint, ¶ 10). They further allege that throughout the course of the Plaintiffs’ membership in TNC, the Defendants used an elaborate enterprise consisting of various corporations having overlapping boards of directors, employees, and interlocking policies all of which were woven together through what ICOC referred to as “Affiliation Agreements.” *Id.* at ¶ 21. See also Exhibit A to Amended Complaint showing the inter-relationships of the Defendants through common board members and personnel.

These allegations are sufficient to place the Defendants on notice of the nature of the civil conspiracy and the unlawful and fraudulent misappropriation of funds attributed to the various actors within this conspiracy.

CONCLUSION

Based on the foregoing reasoning and authorities, the Defendant’s motion to dismiss should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Larry L. Crain, do hereby certify that a true and correct copy of the foregoing pleading was delivered to the following individuals on this the _____ day of _____, 2005, in the manner indicated below:

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