

Court of King's Bench of Alberta

Citation: 1238900 Alberta Ltd v Points West Living Drayton Valley Ltd, 2025 ABKB 351

Date: 20250610
Docket: 2301 09464
Registry: Calgary

Between:

1238900 Alberta Ltd.

Plaintiff/Applicant

- and -

Points West Living Drayton Valley Ltd.

Defendant/Respondent

Reasons for Decision of the Honourable Justice D.J. Reed

Introduction

[1] This matter came before me via a Rule 4.10 Case Conference under the *Rules of Court*, Alta Reg 124/2010 (“*Rules*”). The Applicant/Plaintiff, 1238900 Alberta Ltd. (“**123**”) seeks an Order that this Action be directed to a streamlined trial pursuant to Part 8 of the *Rules*. The Respondent/Defendant, Points West Living Drayton Valley Ltd. (“**Points West**”) opposes that application.

[2] The Application is somewhat unique in that both parties currently have pending summary judgment applications brought pursuant Rule 7.3. The hearing date for those applications, which will be heard by an Applications Judge, is not set. The Parties agree that the evidentiary record is

largely complete. They agree that there are no material facts in dispute, and that the heart of the action turns on questions of contractual interpretation. What they disagree on is whether the matter should be directed to a streamlined trial, or whether their summary judgment applications should proceed. This is not a case of disagreement as to whether the action should be tried by way of a streamlined trial versus a conventional trial. In this application, the Court is asked to compare the summary judgment process before an Applications Judge to a streamlined trial before a Justice of this Court and convert the summary judgment applications into a streamlined trial.

Procedural Background

[3] This action has proceeded relatively expeditiously. The Statement of Claim was filed July 18, 2023. Points West defended on August 14, 2023. 123 filed its summary judgment application and supporting affidavit on September 19, 2023. Points West filed its summary judgment application and supporting affidavit on May 24, 2024, seeking dismissal of 123's application and the action.

[4] Part 5 documentary discovery is complete. Cross examinations, undertakings, and related examinations of 123's affiant are complete. 123 has not yet cross examined the affiant of Points West, but indicated in the hearing it may not do so. Even if it does, the affidavit is not voluminous, and this could be completed expeditiously if required.

[5] The passage of time from the filing of the Points West's application and affidavit and this application was explained by counsel as being used to work through various document production issues and other issues that have led the parties to this point.

[6] 123's present application seeking a streamlined trial was filed in April of this year.

Brief Underlying Facts

[7] At the heart of the within action is the interpretation of certain clauses of an Agreement of Purchase and Sale between the parties dated June 9, 2020, as modified by an Assignment and Amendment of Agreement of Purchase and Sale dated September 14, 2021 (collectively, "PSA"). The PSA relates to a hotel and associated lands that were once owned by 123 and which were transferred, via the mechanisms in the PSA, to Points West via an affiliate of Points West.

[8] The Court understands from a review of the pleadings that pursuant to the terms of the PSA (among other things) 123, for a time, acted as landlord, and the affiliate was the tenant of the hotel in question. 123 completed certain renovations to the hotel which were incorporated into the price set out in the PSA. The renovations were for the purpose of converting the hotel to an AHS approved care facility. Ultimately, the renovation work was completed, the PSA closed, and ownership transferred. The appurtenant lease and other documents and chattels were transferred as well, all pursuant to the terms of the PSA.

[9] The statement of claim alleges that after the PSA closed in 2022, in April of 2023, the Canada Revenue Agency assessed 123's GST return. 123 ended up paying GST owing, interest and penalties. The dollar amount sought in the Statement of Claim is \$708,465.76.

[10] The key issue in this case is which party is responsible for payment of that GST. This is due to the presence of a clause in the PSA dealing with GST, and a GST Indemnity Agreement

provided by Points West to 123. 123 alleges Points West is responsible to compensate it pursuant to the PSA. Points West disagrees with that interpretation. Its position is that 123 is solely responsible for the GST it had to pay.

Issue

[11] The sole issue to determine on this application is whether to direct the parties to a streamlined trial or to permit the summary judgment applications to proceed.

Position of the Parties on This Application

Position of 123

[12] 123's position is that to proceed through the extant summary judgment process is not the most expeditious and cost-effective manner to resolve the issues in this action. It points to the risk that triable issues may be found and one or both applications dismissed, and potential appeals to this court from any decision issued by an Applications Judge. It argues that it meets the test under Rule 8.25(1), and that applying the principles in Rule 1.2, the Court should direct that the parties' extant summary judgment applications proceed by way of streamlined trial instead.

[13] 123 agrees that the only step required to proceed to book the summary judgment applications is for it to confirm whether it will be cross examining Points Wests' affiant or not, and if so for those cross examinations to occur. It further argues that the only real additional step that would need to occur if a streamlined trial were ordered is the parties will have to attempt to reach an agreed statement of facts. It referred the Court to NPP#2023-02, being this Court's Notice to the Profession and Public: Streamlined Trial Process – Civil (Non-Family) Actions (“NPP”) and the fact that the NPP expressly contemplates that actions that depend primarily on the interpretation of documents, such as this one, “will often be suitable for the Streamlined Trial process.”

[14] As a part of its application, as is required, 123 submitted a proposed form of Order, which proposes, among other things:

- (a) The trial be one full day in length;
- (b) No requirement for the parties to file a Form 37;
- (c) No requirement to participate in an alternative dispute resolution process;
- (d) A process for cross examination and undertakings on the Points West affiant (if required);
- (e) An agreed statement of facts be provided by October 1, 2025;
- (f) The delivery of briefs; and
- (g) Mechanics of the hearing, among other things.

[15] I note there are vague references to expert evidence and *viva voce* testimony as required by the Court in the proposed form of Order. However, I understand from the parties that neither party anticipates calling an expert nor requiring any oral evidence. 123 expressly stated this in their filed materials, and Points West counsel confirmed the same in the hearing.

Position of Points West

[16] Points West, on the other hand, wants its summary judgment application to proceed as such. It argues this is the most expeditious manner of proceeding with the least amount of time and expense. Points West argues 123 cannot yet meet the test under Rule 8.25(1).

[17] Inherent in Points West's position is that having chosen to avail itself of the process under Rule 7.3, it has a right to proceed under that process, along with the attendant appeal process if required. Points West has expressly argued that it has no intention of abandoning its summary judgment application or any appeal rights that may flow therefrom under *Rule* 6.14. Further, it points out that Rule 7.3(4) expressly permits the Court hearing a summary judgment application to direct the matter to a streamlined trial and argues that this application is thus premature.

[18] Points West also notes that despite the aspirations of 123, there may be additional steps required to be taken by the parties beyond reaching an agreed statement of facts, including a further Rule 4.10 case conference, participation in a dispute resolution process to satisfy the requirements of Part 4, Division 3 of the *Rules*, among others, thereby increasing the cost, time and expense to resolve the issues, as well as using trial time in this Court that might not otherwise be required.

Law

[19] As noted, this is not a situation where one party seeks a streamlined trial and the other objects, arguing that the matter should be heard via a conventional trial. 123 in this case does not ask the Court to make that comparison in undertaking the analysis. Instead, it asks the Court to compare the extant summary judgment applications and related process to the streamlined trial procedure.

Streamlined Trials and the Test Under Rule 8.25(1)

[20] Rule 8.25 states as follows:

Use of streamlined trial

8.25(1) The Court, on application by a party or on the Court's own motion, may order or direct that a court action be resolved by a streamlined trial if the Court is satisfied that

- (a) it is necessary for the purpose of the action to be fairly and justly resolved, and
- (b) it is proportionate to the importance and complexity of the issues, the amounts involved and the resources that can reasonably be allocated to resolving the dispute.

(2) An order or direction under subrule (1) may be made at any time, including in chambers, at a case conference meeting or case management meeting, at an application for judgment or at any other appearance.

(3) A streamlined trial shall not be considered as a disproportionate process solely because

- (a) issues of credibility may arise,

- (b) some oral evidence may be required at the trial,
- (c) cross-examination of some witnesses may be required, or
- (d) expert evidence may be introduced.

[21] This application engages Rule 8.25(1). That rule sets out the two-part test for a streamlined trial, which is:

1. A streamlined trial is necessary for the purpose of the action to be fairly and justly resolved; and
2. The streamlined trial must be proportionate to the importance and complexity of the issues, the amounts involved and resources that can reasonably be allocated to resolving the dispute.

[22] See, *Arsenault v Big Rock Brewery Limited Partnership by its general partner Big Rock Brewery Operations Corp. and Big Rock Brewery Operations Corp*, 2024 ABKB 387 at para 16; *Hou v Canadian North Inc*, 2024 ABKB 549 at para 8; *Bailey v Northern Alberta Institute of Technology*, 2024 ABKB 563 at para 3.

[23] 123 bears the onus of meeting both branches of the on a balance of probabilities: *Arsenault* at para 18.

Necessity

[24] The necessity requirement has been interpreted as requiring proof that the streamlined trial process is required or essential for the action to be fairly and justly resolved: *Arsenault* at para 20; see also *Hou* at para 19. However, in *Hou*, Renke, J. also indicated the necessity standard leaves the ordinary trial process as the default action resolution process: para 20. He further stated at paragraphs 21 and 22 in part that “... the application should not succeed if the moving party shows only that a streamlined trial is one way of achieving a fair and just result. The term “necessity” imports exclusivity, the identification of the single means of achieving the fair and just result. Necessity, I observe, could be established by showing that an action can be fairly and justly resolved by streamlined trial but not by the ordinary trial process. Exclusivity can be established by eliminating alternatives.”

[25] In *Hou*, linking the requirement of necessity “for the purpose of the action”, Renke J. stated at paras 23 and 24:

[23] A streamlined trial must be found to be necessary “for the purpose of the action” to fairly and justly resolve the action. In my view, this language emphasizes that necessity must be assessed in relation to the particular action. The nature of the particular action and not the “cause of action” alone must be considered.

[24] Factors relevant to the “necessary for the purpose of the action” standard include

- the assessment of whether, on the basis of the r 8.27 materials, the anticipated record would be sufficient to permit a fair and just resolution of the action – including an assessment of whether any material conflict in the evidence requires in-court testimony and cross-examination

- factors relevant to establishing of the facts, including the number of potential witnesses and the likely duration of in-court evidence
- legal doctrines that might narrow or constrain argument (e.g. presumptions or corroboration requirements)
- factors relevant to the course of the litigation, such as delay predating the streamlined trial application or delay that would be occasioned by a full trial
- any urgency in obtaining a resolution.

[26] In *Arsenault*, Armstrong, J. set out a non-exhaustive list of circumstances to consider when considering necessity. They are (at paras 21-23; see also *Hou* at para 25, and *Bailey* at para 8, approving of and applying these circumstances):

[21] The determination of whether a streamlined trial process is necessary for an action to be fairly and justly resolved is a discretionary decision that will be based on the record as set out in Rule 8.27; that is, the pleadings, the parties' statements of the issues to be resolved, outlines of the evidence that would be called at the streamlined trial and any other relevant information provided by the parties.

[22] Some of the circumstances in which a streamlined trial may be found necessary include:

1. Where the streamlined trial will create a more efficient process by eliminating unnecessary steps and reducing overall delay in the resolution of the dispute.
2. Where the streamlined trial will result in a more cost-effective process for the parties.
3. Where the streamlined trial will enhance the administration of justice by making more efficient use of court resources and provide litigants with a more accessible and timely dispute resolution process.
4. Where the streamlined trial will result in a more sharply focussed process and the elimination of complexities in the form of interim applications that do not bear on the ultimate resolution of the real issues in dispute.
5. Where it would be unjust to require the parties to proceed to a full trial, considering the value and complexity of the dispute.
6. Where the streamlined trial process will simplify the proceeding to make it easier for the parties to assess the strengths and weaknesses of their positions and thereby potentially reach a resolution without the need for a trial.

[23] This is not intended to be an exhaustive list and there may be other circumstances in which a streamlined trial will be found necessary depending on the issues that must be determined and the evidence that will be required for the court to make a fair and just determination of those issues.

Proportionality

[27] In *Arsenault*, Armstrong J. stated (at paras 39-40):

[39] At this stage of the analysis, some of the jurisprudence relating to summary trials can be instructive. When considering whether a streamlined trial is a proportionate process, many of the factors that were considered in relation to the suitability of a summary trial are applicable. These factors include the amount involved, the complexity of the matter, the urgency, any prejudice likely to arise by reason of delay, the cost of a trial, the course of the proceedings, the need to cross examine witnesses in court, the necessity of questioning for discovery and whether resolution of the matter will depend on findings of credibility: *Manson Insulation Products Ltd. v Crossroads C&I Distributors*, 2013 ABQB 702 at para 23; *Duff v Oshust*, 2005 ABQB 117 at para 24.

[40] These factors must be considered in light of s 8.25(3) of the Rules of Court which expressly states that a streamlined trial shall not be considered a disproportionate process solely because issues of credibility may arise, some oral evidence may be required at the streamlined trial, cross-examination of some witnesses may be required, or expert evidence may be adduced. These factors are relevant considerations but the mere existence of any one or more of these factors should not, in and of itself, preclude the granting of a streamlined trial.

Steps to Perfect a Streamlined Trial

[28] Rules 8.28 and 8.29 inform the steps required, and that may be required, to prepare the record and schedule a streamlined trial. Their contents are relevant to the within application.

Preparing record

8.28 The parties have a joint responsibility to prepare the record for a streamlined trial to ensure an efficient adjudication, including by

- (a) identifying the real issues in dispute,
- (b) agreeing on relevant and material facts and records that are not in dispute,
- (c) ensuring that only the relevant and material evidence necessary to resolve the dispute is contained in the trial record, and
- (d) organizing the record and the evidence to expedite the streamlined trial and assist the trial judge.

Scheduling of streamlined trials

8.29(1) Unless otherwise provided for in the streamlined trial order or a procedural order, a streamlined trial shall be scheduled in accordance with Division 2 using Form 37, with all necessary modifications.

(2) Where required by the streamlined trial order, a procedural order or a practice note, the parties to a streamlined trial must participate in an alternative dispute resolution process in accordance with rule 4.16.

- (3) When estimating the trial time needed for a streamlined trial, the parties shall include sufficient preparation time prior to the commencement of the trial for the trial judge to review the streamlined trial record.
- (4) No later than three months prior to the streamlined trial, the parties must schedule a pretrial conference or a conference under rule 4.10 to confirm readiness for trial and the amount of trial time required and to resolve any other issue related to the management of the streamlined trial.
- (5) The parties shall confirm the scheduled streamlined trial date in accordance with rule 8.7.

Rule 7.3 and its Interplay with the Streamlined Trial Process

[29] In this case, we are not dealing with a situation where one party wants a trial and the other wants a streamlined trial. We are dealing with a scenario where one party to a competing summary judgment applications wants to bypass that process in favour of a streamlined trial and the other does not.

[30] This engages a consideration of Rule 7.3, and the process of having summary judgment applications heard placed in context with the potential availability of a streamlined trial process.

[31] Rule 7.3 states:

7.3(1) A party may apply to the Court for summary judgment in respect of all or part of a claim on one or more of the following grounds:

- (a) there is no defence to a claim or part of it;
- (b) there is no merit to a claim or part of it;
- (c) the only real issue is the amount to be awarded.

(2) The application must be supported by an affidavit swearing positively that one or more of the grounds described in subrule (1) have been met or by other evidence to the effect that the grounds have been met.

(3) If the application is successful the Court may, with respect to all or part of a claim, and whether or not the claim is for a single and undivided debt, do one or more of the following:

- (a) dismiss one or more claims in the action or give judgment for or in respect of all or part of the claim or for a lesser amount;
- (b) if the only real issue to be tried is the amount of the award, determine the amount or refer the amount for determination by a referee;
- (c) if judgment is given for part of a claim, refer the balance of the claim to trial or for determination by a referee, as the circumstances require.

(4) If the application is unsuccessful, the Court may

- (a) direct that all or part of the claim proceeds by a streamlined trial, and
- (b) make a procedural order respecting the streamlined trial.

[32] Of some importance to this application is the wording of Rule 7.3(4), which permits a Court (defined in the Rules as meaning an Applications Judge or a Justice of this Court in this context: see *Rules*, Appendix, Definitions, “Court”) to direct that all or part of the claim proceed by way of a streamlined trial and to make a procedural order relating thereto. I also note the use of the words “application for judgment” in Rule 8.25(2), in referring to circumstances where an order can be made under Rule 8.25(1), which is consistent with Rule 7.3(4).

[33] The general process for applications under Rule 7.3 is for them to be filed and heard at first instance in Applications’ Judges Chambers: see, *King’s Bench General Practice Note 2: Applications Judges*, effective January 1, 2023, in particular paragraph 42 thereof. That is the process the parties are currently following in this case. That process also means that the appeal right, and process, from a decision of an Applications Judge to this Court is available to the parties: Rule 6.14. It is only in certain exceptional factual or legal circumstances that do not exist here that this Court might hear a summary judgment application at first instance.

Analysis

[34] For the reasons that follow, I dismiss 123’s application.

[35] The comparison made in the case law applying Rule 8.25(1) is one which asks whether the action in question should be tried in the ‘traditional’ manner or whether it should be tried as a streamlined trial. Here, 123 asks the Court to compare the summary judgment process under Rule 7.3 with a streamlined trial and find that the streamlined trial is the necessary and proportionate process. 123 argues that when they are compared, and Rule 1.2 is also considered, the streamlined trial process is preferable to the parties proceeding with their summary judgment applications.

[36] While at first blush a reading of Rule 8.25 in isolation seems to contemplate the possibility of a comparison of a streamlined trial to court process other than a conventional trial in determining whether the test in Rule 8.25(1) is met, I cannot find that to be the proper interpretation of Rule 8.25 when all of the streamlined trial rules are considered in the context of those rules and the *Rules* as a whole, including Rule 1.2 and the foundational principles underlying the *Rules*.

[37] The overarching purpose of the rules in Part 8, Division 5, is to determine *the mode of trial*. It is not to determine whether a streamlined trial is necessary and proportionate compared to an extant pre-trial summary determination proceeding under Part 7 of the Rules, here under Rule 7(3), and to push an action to a streamlined trial rather than have the summary interlocutory proceedings heard.

[38] This is confirmed by the wording of Rules 7.3(4) and 8.25(2), canvassed above, as well as Rule 8.26, which indicates that at any case conference or an application under the Division the judge may direct that the trial proceed, in whole or in part, as a streamlined trial or trial. Further, Rule 8.27, which sets out the procedure for a contested streamlined trial application, states that “Any dispute about the *mode of trial* shall be resolved in a summary manner...”. This is not a dispute about the mode of trial at all.

[39] In coming to this conclusion, I have had regard to the relevant principles of statutory interpretation, in particular, *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 at para 21 which, in turn, quotes Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) at 87 as follows:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[40] This principle has been traced through the case law in subsequent years, with the Supreme Court of Canada stressing text, context and purpose, resulting in what has been called the “modern approach” to statutory interpretation, which has been similarly stated as being “that the words of a statute must be read ‘in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament’”: see, *1704604 Ontario Ltd v Pointes Protection Association*, 2020 SCC 22, [2020] 2 SCR 587, at para 6; *Benchwood Builders, Inc, v Prescott*, 2025 ONCA 171 at para 15.

[41] There is no doubt that the above principles also apply to interpreting the *Rules*. See for example, *Canadian Natural Resources Limited v ShawCor Ltd*, 2014 ABCA 289 at para 30; *Paragon Capital Corporation Ltd v Starke Dominion Ltd*, 2020 ABCA 216 at paras 37 and 38.

[42] That is not to say that in determining the appropriate mode of trial (ie: engaging in the appropriate analysis, which is to assess whether the action should be tried by way of a streamlined trial or conventional trial), issues such as time, cost, expense and process (including the nature and kind of interlocutory applications that may be advanced) should not be considered. That is in fact what the *Rules* around summary trials and the case law requires. However, as I have noted, this application is not a dispute about the mode of trial. This application is a dispute about whether to permit 123 to elect (and thereby force Points West), to convert their respective summary judgment applications into a streamlined trial.

[43] Overall, the comparison requested and relief sought by 123 is not something permitted by Rule 8.25, and this application lacks the proper foundation for consideration. On this basis alone I dismiss the application. The practical effect of what is being proposed by 123 is a short circuiting of the extant pre-trial applications contemplated in Part 7 of the *Rules* in favour of shifting those applications beyond the jurisdiction of Applications Judges and into this Court as trials instead. That is not consistent with the wording of the *Rules* and seems to me to run contrary to Rule 1.2, especially where there is no evidence before me that the process engaged under Part 7 is being used in a vexatious, abusive, or frivolous fashion. To the contrary, this case seems well suited to the process that is being undertaken.

[44] Even if I am wrong about the above, and a comparison of the summary judgment procedure to a streamlined trial is an appropriate manner of proceeding under Rule 8.25(1), using the lens of applicable case law I have summarized, I find that 123 cannot in these circumstances meet the threshold necessity requirement. Nor can it meet the proportionality requirement.

[45] As noted by the Court in *Hou*, the application should not succeed if the moving party shows only that a streamlined trial is *one way* of achieving a fair and just result. That is exactly the case here. On the facts before me, the summary judgment process under Rule 7.3 is *also* a way of achieving a fair and just result short of any trial of the proceeding, whether by streamlined trial or a conventional trial. In fact, it may be a more expedient way of proceeding, such that a trial of this action is not required at all.

[46] At the core of 123’s position is that despite the views of the parties, the extant summary judgment applications *might be* found to be unsuitable for summary determination, and *might*

result in the additional passage of time and expenditure of funds by the parties if there are appeals, and as a result the parties should skip forward to a streamlined trial process instead. This argument, among other things, fails to give credence and meaning to the wording in Rule 7.3(4).

[47] The arguments of 123 require this Court to predetermine, to some degree, or otherwise speculate at the potential outcomes of the summary judgment applications, or the decisions either of the parties may take to exercise appeal rights after the hearing of those applications.

[48] Even considering the additional necessity factors set out in the case law (to the extent they are applicable), necessity is also not made out by 123 on a balance of probabilities because:

- (a) I cannot say at this stage that the summary judgment process the parties are engaged in is somehow frivolous or vexatious or doomed to fail on the face of it due to unsuitability for that mode of proceeding. In fact, in a case like this where there are no material facts in dispute and no credibility issues apparent on the record, this weighs in favour of the process contemplated under Rule 7.3.
- (b) Where, as here, there are two applications, one for judgment and the other for dismissal under Rule 7.3 and the party seeking dismissal wishes to stand on its rights to a hearing under that Rule and access to the attendant appeal process, there is a consideration of procedural fairness to that party (here Points West) since directing the matter to a streamlined trial results in jumping over the hearing before an Applications Judge and the appeal rights under Rule 6.14;
- (c) I am not sure on balance that the streamlined trial process would be more cost effective. A full day of trial is requested. It will likely require a further Rule 4.10 case conference, the parties attempting to reach an agreed statement of facts, potential completion of a dispute resolution process in the absence of an order exempting the parties from that process, briefing, and a trial. There is still an appeal process to the Court of Appeal from the streamlined trial.
- (d) To the contrary, summary judgment requires briefing and argument and would likely require a half day special chambers hearing before an Applications Judge (though I note that if a full day were required my decision would be no different). The decision at first instance before the Applications Judge may well end the matter. That potential alone on the facts of this case suggest that a streamlined trial is probably not necessary here.
- (e) I do not think in this case the administration of justice would be enhanced nor would the process become more sharply focussed or simplify the action and make it easier for the parties to assess the strengths and weaknesses of their respective cases any more at a streamlined trial than proceeding with their applications under Rule 7.3.

[49] For the same reasons articulated in relation to necessity, I do not think it is proportional to send the parties through a streamlined trial process when the action may well be fully resolved via the process under Rule 7.3.

Conclusion

[50] 123's application to have the matter directed to a streamlined trial at this time is dismissed.

[51] If the parties cannot agree on costs, counsel have leave, within 30 days of the date of this decision to file written submissions in letter form not to exceed 2 single-spaced pages, excluding exhibits and authorities, and attaching a draft Bill of Costs, and I will issue an endorsement in due course.

[52] I thank counsel for their able submissions.

Heard on the 16th day of May, 2025.

Dated at the City of Calgary, Alberta this 10th day of June, 2025.

D.J. Reed
J.C.K.B.A.

Appearances:

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