Court File No.: CV-24-00719261-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

COMMERCIAL PACKAGING SOLUTIONS INC. and 2777463 ONTARIO LTD.

Respondents

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

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PART I – OVERVIEW

1. This Application is made by Royal Bank of Canada ("**RBC**") for an Order under subsection 243(1) of the *Bankruptcy and Insolvency Act* (Canada) ("**BIA**") and section 101 of the *Courts of Justice Act* (Ontario) ("**CJA**") appointing Grant Thornton Limited ("**GTL**") as receiver and manager (in such capacity, the "**Receiver**"), without security, of all the assets, undertakings, and properties (the "**Property**") of the Respondents, Commercial Packaging Solutions Inc. ("**CPSI**") and 2777463 Ontario Ltd. ("**277**") (collectively, the "**Debtors**"), including, without limitation, certain real property municipally known as 890 Dillingham Road, Pickering, Ontario ("**890 Dillingham**"),

2. RBC seeks the appointment of GTL as Receiver over the Property of the Debtors in order to: (1) protect the Property and have same turned over to the Receiver to deal with the Property in an orderly manner, subject to further Orders of the Court; and (2) maximize value for the benefit of all of the stakeholders.

3. The appointment of GTL as Receiver is just and convenient in the circumstances and granting the charge in favour of the Receiver over the Property is appropriate (the "**Receiver's Charge**").

PART II – FACTS

4. The relevant facts in connection with this Application are more fully set out in the Affidavit of Jan Oros, sworn April 26, 2024 (**"Oros Affidavit"**). All capitalized terms herein not otherwise defined shall have the same meaning ascribed to them in the Oros Affidavit.

PART III – ISSUES

5. This Application requires a resolution of the following issues:

   (a) Should this Court make an Order pursuant to subsection 243(1) of the BIA and section 101 of the CJA appointing GTL as the Receiver over the Property of the Debtors?

   (b) Should this Court make an Order pursuant to subsection 243(6) of the BIA granting the Receiver's Charge?

PART IV – LAW AND ARGUMENT

1. THE TEST FOR THE APPOINTMENT OF A RECEIVER

6. This Court has the power to appoint a receiver or a receiver and manager under subsection 243(1) of the BIA and section 101 of the CJA.[1]

7. Pursuant to subsection 243(1) of the BIA, the court may appoint a receiver where it considers it to be just or convenient to do so. Subsection 243(1) provides:

> 243(1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:
>
> > (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was

[1] *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended [**BIA**], s. 243(1), Schedule B; *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended [**CJA**], s. 101, Schedule B.

> acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
>
> (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
>
> (c) take any other action that the court considers advisable.[2]

8. As a threshold issue, where an appointment is to be made under section 243 of the BIA, the court must be satisfied that either: (i) the insolvent person received ten days' notice under section 244 of the BIA of the moving party's intention to enforce its security, (ii) the insolvent person consented to the appointment of a receiver prior to the expiry of the ten day period, or (iii) it is otherwise appropriate to order the appointment prior to the expiry of the ten day notice period.[3]

9. Similarly, the test for the appointment of a receiver under section 101 of the CJA is also whether such appointment would be just or convenient. Subsection 101(1) of the CJA provides as follows:

> 101(1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.[4]

10. In deciding whether to appoint a receiver, the court must have regard to all the circumstances, but in particular to the nature of the property and the rights and interests of all parties in relation thereto. Typically, the issues for a court to determine on a receivership application include the following:

(a) the existence of a debt and default;

(a) the quality of the security; and

(b) the need for the appointment of a receiver in view of alternate remedies available to the creditor, the nature of the property, the likelihood of maximizing the return

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[2] BIA, s. 243(1), Schedule B.
[3] BIA, ss. 243(1) & 244, Schedule B.
[4] CJA, s. 101(1), Schedule B.

to the parties, the costs associated with the appointment, and any need to preserve the property pending realization.[5]

11. Additionally, whether the applicant has a right under its security documentation to appoint a receiver is an important factor to be considered. While the appointment of a receiver is generally viewed as an extraordinary remedy, in cases where the security documentation of the applicant provides for a private or court-appointed receiver, the burden on the applicant is reduced. Where the security document provides for the appointment of a receiver on default, the applicant is merely seeking to enforce a contractual term of the agreement between the parties and the issue is reduced to a consideration of whether it is in the interests of all concerned to have the receiver appointed by the court. This involves an examination of, *inter alia*, (i) the potential cost of the receivership, (ii) the relationship between the debtor and the creditors, (iii) the likelihood of maximizing the return on and preserving the subject property, and (iv) the best way of facilitating the work and duties of the receiver.[6]

12. Where a creditor's security documentation provides for the appointment of a receiver, it is not necessary for the creditor to demonstrate that it will suffer irreparable harm if the appointment of a receiver is not granted by the court.[7]

13. Furthermore, courts will not regard the appointment of a receiver as being an extraordinary remedy where the security documentation permits the appointment. In such case, the applicant is merely seeking to enforce a term of the agreement.[8]

14. In determining whether it would be just, appropriate, or convenient to appoint a receiver, Canadian courts have historically considered a number of factors, including, but not limited to, whether:

(i) the applicant has the power to appoint a receiver under its security instrument;

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[5] *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007 [***Carnival Leasing***] at para. 24; *Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996 CarswellOnt 2328 (Ont. Gen. Div. [Commercial List]) [***Freure Village***] at para. 11; *Central 1 Credit Union v. UM Financial Inc. and UM Capital Inc.*, 2011 ONSC 5612 (Commercial List) [***UM Financial***] at para. 22.
[6] *Carnival Leasing*, *supra* at para. 27; *Freure Village*, *supra* at para. 13.
[7] *Carnival Leasing*, *supra* at para. 28; *Swiss Bank Corp. (Canada) v. Odyssey Industries Inc.*, 1995 CarswellOnt 39 (Ont. Gen. Div. [Commercial List]) Applicant's Book of Authorities ("**BOA**"), Tab 1 at para. 28.
[8] *Elleway Acquisitions Limited v. The Cruise Professionals Limited*, 2013 ONSC 6866 at para. 27.

(ii) the security held by the applicant is or may become insufficient to secure the indebtedness;

(iii) the debtor has broken or otherwise failed to carry out its obligations;

(iv) an appointment is necessary to protect the security from existing or realistically perceived jeopardy or danger;

(v) the debtor has failed to account;

(vi) the applicant will suffer irreparable harm or injury if a receiver is not appointed;

(vii) there is demonstrated urgency for the appointment of a receiver;

(viii) the cost to the parties of making the appointment is justified relative to the expected realization to be achieved from the appointment;

(ix) the balance of convenience favours the appointment; and

(x) the proposed appointee is capable of carrying out the purpose for which the appointment is sought.[9]

2. THE APPOINTMENT OF A RECEIVER IS JUST AND CONVENIENT

15. The appointment of a Receiver is just and convenient in this case.

16. The general security agreements granted by CPSI (the "**CPSI GSA**") and 277 (the "**277 GSA**", and together with the CPSI GSA, the "**GSAs**") contractually provide RBC with the right to appoint a receiver.[10]

17. The GSAs secure all obligations of the Debtors to RBC, which includes all obligations arising under:

[9] *Standard Trust Co. v. Pendygrasse Holdings Ltd.*, 1988 CarswellSask 27 (Sask. K.B.), BOA, Tab 2 at para. 10; *RBC v. Ten 4 System Ltd. et. al.*, Ont. S.C.J. [Commercial List], CV-23-00705869-00CL, October 18, 2023 (unreported endorsement of Justice Osborne J), BOA, Tab 3 at para. 10; aff'd 2023 ONCA 839.
[10] General Security Agreement dated December 7, 2023 ("**CPSI GSA**"), Application Record ("**AR**"), Tab 2E, p. 74 at s. 13; General Security Agreement dated December 7, 2023 ("**CPSI GSA**"), AR, Tab 2I, p. 114 at s. 13.

(a) the credit agreement between CPSI and RBC dated December 4, 2023 (the "**CPSI Credit Agreement**");

(b) the credit agreement between 277 and RBC dated December 4, 2023 (the "**277 Credit Agreement**");

(c) the Guarantee and Postponement of Claim between 277 and RBC dated December 7, 2023, securing CPSI's obligations under the CPSI Credit Agreement up to a maximum amount of $8,300,000 (the "**277 Secured Guarantee**"); and

(d) the Guarantee and Postponement of Claim between CPSI and RBC dated December 7, 2023, securing 277's obligations under the 277 Credit Agreement up to a maximum amount of $1,155,000 (the "**CPSI Secured Guarantee**").[11]

(i) Defaults under the credit agreements

18. The Debtors are in default of their obligations under the credit documents. Specifically:

(a) On April 1, 2024, 277 failed to make a monthly payment to RBC in the amount of $59,485.52 owing in respect of the credit facility under the 277 Credit Agreement;[12]

(b) 277 has failed to pay property tax in the amount of $25,367.78 due and payable in respect of 890 Dillingham (the "**Property Tax Arrears**");[13] and

(c) 277 has failed to pay water charges incurred in respect of 890 Dillingham in the amount of $2,529.91 (the "**Water Arrears**").[14]

19. Furthermore, the CPSI Credit Agreement provides for, among other facilities, a revolving demand facility (the "**Demand Loan**"). By accepting the CPSI Credit Agreement, CPSI agreed that notwithstanding compliance with the covenants and terms of the CPSI Credit Agreement, the

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[11] Credit agreement dated December 4, 2023 ("**CPSI Credit Agreement**"), AR, Tab 2D, p. 52; Credit agreement dated December 4, 2023 ("**277 Credit Agreement**"), AR, Tab 2H, p. 93; Guarantee and Postponement of Claim dated December 7, 2023 ("**277 Secured Guarantee**"), Tab 2G, p. 89; Guarantee and Postponement of Claim dated December 7, 2023 ("**CPSI Secured Guarantee**"), Tab 2L, p. 132.
[12] Oros Affidavit, AR, Tab 2 at para. 26.
[13] Oros Affidavit, AR, Tab 2 at para. 28a; Tax Certificate dated March 24, 2024, AR, Tab 2P, p. 163.
[14] Oros Affidavit, AR, Tab 2 at para. 28b; Email from the Regional Municipality of Durham dated March 25, 2024, AR, Tab 2Q, p. 165.

Demand Loan was repayable on demand, and that non-payment pursuant to RBC's demand would constitute an event of default.[15]

20. On April 2, 2024, RBC demanded payment in respect of a demand facility under the CPSI Credit Agreement. To date, neither CPSI nor 277 has paid RBC accordingly.[16]

21. Where a demand for payment is made under a demand facility, the debtor must be allowed a reasonable amount of time to raise the funds necessary to repay the debt. A reasonable amount of time for repayment following a demand is a finite amount of time measured in days, not weeks, and not approaching a month.[17]

(ii) Defaults under the GSAs

22. Section 12 of each GSA provides:

> RBC, in its sole discretion, may declare all or any part of Indebtedness which is not by its terms payable on demand to be immediately due and payable, without demand or notice of any kind, in the event of default, or if RBC considers itself insecure or that the Collateral is in jeopardy.[18]

23. By accepting the GSAs, the Debtors agreed that in the event that either or both of the Debtors failed to perform or comply with any of the provisions of the CPSI Credit Agreement, 277 Credit Agreement, or the GSAs, or if RBC considered its security (including 890 Dillingham) to be in jeopardy, RBC would have the right to immediately demand payment of any amounts advanced under the CPSI Credit Agreement and 277 Credit Agreement, together with interest.[19]

24. For several reasons, and in addition to the events of default set out above, RBC is reasonably concerned regarding the Debtors' business and Property, and believes that its security may be in jeopardy:

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[15] CPSI Credit Agreement, AR, Tab 2D, p. 52.
[16] Oros Affidavit, AR, Tab 2 at paras. 63-64; Letter from RBC to CPSI dated April 4, 2024, attaching NITES ("**CPSI Demand**"), AR, Tab 2EE, p. 231; Letter from RBC to 277 dated April 2, 2024, attaching NITES, AR, Tab 2FF, p. 240.
[17] *Carnival Leasing*, *supra* at para. 13.
[18] CPSI GSA, AR, Tab 2E, p. 74 at s. 12; 277 GSA, AR, Tab 2I, p. 114 at s. 12.
[19] Commitment Letter dated October 14, 2021, AR, Tab 2E, p. 57.

(a) In March 2024, CPSI engaged in a series of questionable transactions in CPSI's deposit account with RBC (the "**CPSI Account**"), including certain transactions which resulted in the return of fourteen cheques between March 5 and March 11, 2024. This series of transactions caused CPSI to incur an overdraft in the CPSI Account in the amount of $677,669.99 (the "**Overdraft**");[20]

(b) CPSI has advised at least one of its payors that CPSI has "changed banks" and directed that payments to CPSI are to be deposited with a financial institution other than RBC;[21]

(c) Minimal transaction activity has occurred in the CPSI account since March 8, 2024;[22]

(d) The Debtors have provided inconsistent information regarding certain real property (the "**Lamont Property**"). Although the Debtors previously advised RBC that proceeds from sale of the Lamont Property in the amount of $1 million (the "**Sale Proceeds**") would be deposited into the CPSI Account in or around March 2024, RBC has received a copy of a mortgage commitment letter which contemplates a mortgage of the Lamont Property for $250,000 at 42% per annum, with a maturity date of September 7, 2024;[23]

(e) Between March 12 and March 15, 2024, the Debtors represented to RBC that the Sale Proceeds would be deposited into the CPSI Account to remedy the Overdraft, but no such deposits have been made to date;[24]

(f) 277 failed to disclose its intent to sell 890 Dillingham, despite the property having been listed for sale prior to entering into the 277 Credit Agreement, 277 GSA, and 277 Secured Guarantee;[25] and

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[20] Summary of transactions in the CPSI Account from March 5, 2024 to March 11, 2024, AR, Tab 2R, p. 167.
[21] Email from client dated April 8, 2024 re: payment to CPSI, AR, Tab 2T, p. 175.
[22] Account statement for the CPSI Account for the period of February 29, 2024 to March 28, 2024, AR, Tab 2V, p. 185; Transaction history for the CPSI Account from March 27, 2024 to April 25, 2024, AR, Tab 2W, p. 192.
[23] Oros Affidavit, AR, Tab 2 at paras. 58-59; Email chain dated February 15 to March 6, 2024 re: BMO Accounts, Tab 2U, p. 179; Mortgage Commitment dated March 7, 2024, AR, Tab 2DD, p. 222.
[24] Oros Affidavit, AR, Tab 2 at paras. 30-34.
[25] 890 Dillingham listing dated April 24, 2024, AR, Tab 2AA, p. 204.

(g) With respect to 890 Dillingham, the Property Tax Arears and Water Arrears may continue to accrue, which accruals threaten to erode RBC's collateral.

25. RBC, through its counsel, has demanded payment of all outstanding indebtedness in the amount of $9,588,874.29 and USD$5,083.43, being the aggregate of all amounts advanced pursuant to the CPSI Credit Agreement and 277 Credit Agreement (the "**Indebtedness**").[26]

26. To date, the Debtors have not fully repaid the Indebtedness, which constitutes a further event of default under the GSAs.[27]

27. The defaults that have occurred are material and have not been waived by RBC. As a result of the defaults, RBC was entitled to accelerate the full amount of the Indebtedness and did so.

28. RBC has delivered demands and notices of intention to enforce its security (**"NITES"**) and the ten-day period under the NITES has passed without the Indebtedness being paid.

29. RBC is under no obligation, legal or otherwise, to continue to support the Debtors. RBC is contractually entitled to seek the appointment of a receiver by the court, and it is just and equitable for a Receiver to be appointed.

30. In deciding whether it is just or convenient to appoint a receiver, the court will consider matters including the preservation and protection of the property and the balance of convenience.[28]

31. A court-appointed receiver is an officer of the court and acts in a fiduciary capacity with respect to all interested parties.[29]

32. Accordingly, it is only by appointment of a receiver that the Property can be dealt with in an orderly fashion, having regard to the interests of all stakeholders.

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[26] Oros Affidavit at paras. 16 & 21; CPSI Demand, AR, Tab 2EE, p. 231; Letter from RBC to 277 dated April 18, 2024, attaching NITES ("**277 Demand**"), AR, Tab 2KK, p. 263.
[27] CPSI GSA, AR, Tab 2E, p. 74 at s. 11a; 277 GSA, AR, Tab 2I, p. 114 at s. 11a.
[28] *Citibank Canada v. Calgary Auto Centre*, 58 DLR (4th) 447, 98 AR 250 (Alta. K.B.) at para. 31.
[29] *Ravelston Corporation Limited (Re)*, [2007] OJ No 414 (QL) at paras. 62-63; *Ostrander v. Niagara Helicopters Ltd.* (1973), 1 O.R. (2d) 281 (H.C.) at para. 6.

3. THE TERMS OF THE REQUESTED ORDER ARE APPROPRIATE

33. Subsection 243(6) of the BIA provides as follows with respect to granting a receiver's charge:

> (6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.[30]

34. In this case, it is appropriate for the Court to grant the Receiver's Charge over the Property to ensure that the Receiver and its counsel are able to recover any fees and disbursements owed to them.

35. RBC is agreeable to the Receiver's Charge being granted. Furthermore, all secured creditors have been given notice of this Application and have been provided with an opportunity to make representations.

PART V – CONCLUSION

36. For the foregoing reasons, it is both just and convenient to appoint GTL as Receiver over the Property of the Debtors and to grant the Receiver's Charge.

37. It is respectfully submitted that the relief requested by RBC should be granted and GTL ought to be appointed as Receiver over the Property of the Debtors and the Receiver's Charge ought to be granted, on the terms of the Order sought.

[30] BIA, s. 243(6), Schedule B.

PART VI – ORDER REQUESTED

38. The Applicant requests that this Court issue an Order substantially in the form attached at Tab 3 to the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

May 6, 2024

Alex MacFarlane / Nick Hollard
Lawyers for the Applicant

SCHEDULE "A" – AUTHORITIES CITED

1. *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007
2. *Bank of Nova Scotia v. Freure Village on Clair Creek*, [1996] OJ No 5088 (Gen. Div. [Commercial List])
3. *Central 1 Credit Union v. UM Financial Inc. and UM Capital Inc.*, 2011 ONSC 5612 (Commercial List)
4. *Swiss Bank Corp. (Canada) v. Odyssey Industries Inc.*, 1995 CarswellOnt 39 (Ont. Gen. Div. [Commercial List])
5. *Elleway Acquisitions Limited v. The Cruise Professionals Limited*, 2013 ONSC 6866
6. *Standard Trust Co. v. Pendygrasse Holdings Ltd.*, 1988 CarswellSask 27 (Sask. K.B.)
7. *RBC v. Ten 4 System Ltd. et. al.*, Ont. S.C.J. [Commercial List], CV-23-00705869-00CL, October 18, 2023 (unreported endorsement of Osborne J)
8. *RBC v. Ten 4 System Ltd. et. al.*, 2023 ONCA 839
9. *Citibank Canada v. Calgary Auto Centre*, 58 DLR (4th) 447, 98 AR 250 (Alta. K.B.)
10. *Ravelston Corporation Limited (Re)*, [2007] OJ No 414 (QL) (Sup. Ct. J.)
11. *Ostrander v. Niagara Helicopters Ltd.* (1973), 1 O.R. (2d) 281 (H.C.)

SCHEDULE "B" – LEGISLATION CITED

***Bankruptcy and Insolvency Act*, R.S.C., 1985, C. B-3, as amended**

Section 243(1)

Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

> (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
>
> (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
>
> (c) take any other action that the court considers advisable

Section 243(1.1)

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

> (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
>
> (b) the court considers it appropriate to appoint a receiver before then.

Section 243(6)

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Section 244

244 (1) A secured creditor who intends to enforce a security on all or substantially all of

> (a) the inventory,
>
> (b) the accounts receivable, or
>
> (c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Period of notice

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

No advance consent

(2.1) For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

Exception

(3) This section does not apply, or ceases to apply, in respect of a secured creditor

> (a) whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or
>
> (b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

Idem

(4) This section does not apply where there is a receiver in respect of the insolvent person.

***Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended**

Section 101

(1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

(2) An order under subsection (1) may include such terms as are considered just.

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