



Neutral Citation Number: [2022] EWHC 904 (QB)

Case No: QB-2019-002712

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 13/04/2022

**Before**

**MR JUSTICE SWIFT**

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**BETWEEN**

- (1) **BB**
- (2) **CC**
- (3) **DD**
- (4) **EE**
- (5) **FF**
- (6) **GG**
- (7) **HH**
- (8) **II**

**Claimants**

**- and -**

- (1) **MOUTAZ AL KHAYYAT**
- (2) **RAMEZ AL KHAYYAT**
- (3) **DOHA BANK LIMITED**

**Defendants**

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**BEN EMMERSON QC & KABIR BHALLA** (instructed by **McCue Jury & Partners LLP**)  
for the **Claimants**  
**HANNAH BROWN QC & SANDY PHIPPS** (instructed by **Eversheds Sutherland**) for the  
**Third Defendant**

Hearing dates: 1, 2 and 29 March 2022

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**Approved Judgment**

**MR JUSTICE SWIFT:**

**A. Introduction**

1. This claim is still at its early stages. However, it has a lengthy and somewhat Byzantine history. I have before me an application by the Third Defendant, Doha Bank Limited (“the Bank”) to strike out the Claimants’ Particulars of Claim, and what comes to an application by the Claimants for summary determination of an application by the Bank that the proceedings against it must be dismissed on grounds of state immunity. Before addressing those matters I need to say something to explain how the case has come to this point.
2. The claim was issued on 30 July 2019. It is a claim for damages for personal injury and damage to property, all of which occurred in Syria between 2012 and 2017. The Claimants are all Syrian nationals, living in Syria until they were forced to flee by the activities of Al Nusra Front, a jihadist organisation with links both to Al Qaida and the Islamic Front. Al Nusra Front has been identified as a terrorist organisation by various countries, and by the United Nations. Put very briefly, the Claimants’ case is that they were the victims of actions taken by Al Nusra Front and that the Defendants are liable to compensate them: the First and Second Defendants because they provided funds to Al-Nusra Front; the Bank because it facilitated those payments. The First and Second Defendants are described as “well-known Syrian/Qatari businessmen”. They and companies they control have long-standing banking arrangements with the Bank. The Bank is incorporated in Qatar and has branches and representative offices internationally, including in London.
3. The proceedings were served on the Bank on 29 August 2019. The Bank has not yet served and filed its defence to the claim. This is because of the sequence of events I now set out. On 24 December 2019 the Bank applied to stay the proceedings on grounds of *forum non conveniens*. The hearing of that application was due to take place in November 2020, but on 11 November 2020, on the application of the Claimants, the hearing of the application was adjourned. When granting the application to adjourn, HHJ Coe QC gave directions for filing evidence on the *forum non conveniens* application, and for a directions hearing to take place in February 2021, in anticipation of the hearing of the *forum non conveniens* application in October 2021. The Claimants served evidence in January 2021.
4. The matter next came back to court on 24 May 2021 before Chamberlain J. He considered applications by the Bank to strike out parts of the evidence filed by the Claimants in response to the *forum non conveniens* application, and for other directions, and an application by the Claimants for permission to cross-examine the deponents of statements filed by the Bank for the purposes of the *forum non conveniens* application (an expert statement, and statements made by each of the First and Second Defendants).
5. The application to cross-examine was refused. The Bank’s application to exclude evidence succeeded to the following extent:

“72. ...

(f) However, evidence which relates not to the underlying allegations but to the alleged interference in

these proceedings by the Defendants or agents of the State of Qatar should be before the judge, because this evidence is directly relevant to the suitability of the State of Qatar as a forum. I will not limit that evidence to matters occurring since 9 October 2020, because HHJ Coe QC's Order did not contain any such express limitation. I will permit all of the Claimants' evidence which relates to alleged attempts by the Defendants or others on behalf of the State of Qatar to interfere with the course of justice in these proceedings. At present the Claimants have not identified any parts of their evidence going to these issues beyond those referred to in paragraph 30 of Doha Bank's skeleton argument, but I will give a further opportunity to the Claimants to do so, and for Doha Bank to respond, in the light of the approach I have outlined in this judgment."

Chamberlain J gave directions to allow this conclusion to be realised (see his Order of 22 June 2021). He also granted the Claimants permission to apply to amend their Particulars of Claim "... to include any part of the matters contained in the [statements filed by the First to Third and Eighth Claimants] that can properly be included in a statement of case". Final directions on the evidence were set out in Chamberlain J's further Order of 9 August 2021.

6. On 2 July 2021 the Claimants applied to amend their Particulars of Claim. The case set out in the proposed Amended Particulars of Claim was significantly broader than the case originally pleaded. The proposed case comprised a claim that the First and Second Defendants acted in conjunction with "members of the Qatari ruling elite" to fund Al Nusra Front, and that the Bank had facilitated that conspiracy. On 27 July 2021, the Bank responded to the application for permission to amend with its own application that the court lacked jurisdiction to hear the Claimants' case on grounds of state immunity, pursuant to the State Immunity Act 1978 ("the 1978 Act"). The Bank also requested that the hearing of the *forum non conveniens* application be stayed until after the state immunity issue had been decided, and that the hearing then set for that purpose (in October 2021) be vacated.
7. The application in reliance on provisions of the 1978 Act rested entirely on the Bank's submission on the meaning of the Claimants' proposed Amended Particulars of Claim. The Bank did not itself advance any positive evidential case. The Bank's contention was that if the facts alleged in the proposed Amended Particulars of Claim were assumed to be true, it had acted as an agent of the Qatari state and was therefore within the immunity at section 1 of the 1978 Act. Alternatively, the Bank submitted that if what the Claimants alleged had happened was true, then it had acted within the scope of the immunity at section 14(2)(a) of the 1978 Act – i.e., that it was a relevant "separate entity" which had acted "in exercise of sovereign authority" in circumstances in which a state acting in the same way would have immunity under the 1978 Act.
8. The Claimants then appear to have reconsidered the wisdom of their proposed Amended Particulars of Claim. In a letter to the Bank's solicitors dated 31 August 2021 the Claimants' solicitors confirmed that the application for permission to Amend the Particulars of Claim had been withdrawn. Nevertheless, that letter went on to assert "the nature of the Claimants' case about the relationship between the terrorist funding

activities and the State [of] Qatar was set out in ... the original [Particulars of Claim] ...”. The letter went on to point out matters in that pleading (a) that the First and Second Defendant’s involvement for funding was “motivated and enabled” by their connections to Qatari estate; (b) that their activities had been assisted by Qatari military and intelligence officers; and (c) that the First and Third Defendants were provided with funds from the office of the Emir of Qatar. Based on these matters, the letter asserted that it was the Claimants’ contention that:

“... the State of Qatar embroiled itself in a conspiracy to pervert the course of justice to prevent its involvement in terrorist financing from coming to light”.

9. In light of these matters, the Bank persisted in its state immunity application on the same legal premises as before, but now by reference to the Claimants’ assertions as to their claim as originally pleaded.
10. The case came before Calver J on 17 September 2021, on the Bank’s Application Notice of 27 July 2021. The matters sought by that Application Notice comprised (a) the Bank’s application under the 1978 Act; (b) an application for an order that the Claimants file and serve Amended Particulars of Claim in the form of the now withdrawn draft Amended Particulars of Claim; (c) an application that the hearing of the *forum non conveniens* application set for 4 October 2021 be vacated and that the *forum non conveniens* issue be decided (if necessary) after the state immunity application; and (d) an application that the hearing of the state immunity application be stayed pending determination of a state immunity application in CL-2021-332.
11. Claim CL-2021-332 (“the Hashwah litigation”) is brought by Basel Hashwah and eight other claimants against the Bank and 17 other defendants, including the First and Second Defendants in these proceedings. The claims in those proceedings are also for compensation for damage to property and personal injury arising from the activities of Al Nusra Front, and the premise for the liability of the defendants is their involvement in providing funds to Al Nusra Front. In that case, the claimants contend either that the funding was the result of a conspiracy “driven by high ranking members of the Qatari ruling elite” or, alternatively that the defendants appropriated moneys from the Qatari state which were then used to fund Al Nusra Front.
12. At the hearing in September 2021, Calver J considered a range of issues. Most importantly for present purposes, he considered the submission by the Bank that the Claimants’ pleaded case was unclear and/or was not properly pleaded as to the extent to which the Claimants wished to contend that the financing arrangements and activities relied on involved the Qatari state. Calver J was sympathetic to that submission. He considered that before any further steps could be taken either on the *forum non conveniens* application or on any application that the claim was barred on state immunity, the Claimants’ pleaded case needed to be definitively stated.
13. The material parts of his judgment were as follows:
  - “15. It can accordingly be seen that the claimants wish to go further than they had pleaded originally and to advance a case that the alleged terrorist financing which forms the subject of the claim was carried out as part of a broader conspiracy in which

members of the Qatari ruling elite participated and, it appears, allegedly carried out on behalf of the state of Qatar, and that the Bank facilitated that conspiracy (which arguably raised issues of agency).

...

28. ... I consider that the claim advanced in the draft amended Particulars of Claim is indeed a broader one than the one advanced in the Particulars of claim – specifically alleging that there was a conspiracy involving and at the behest of the Qatari ruling elite – and that the Claimants themselves recognised that at the time by considering it necessary to serve these draft amendments.

29. The allegation is not that the Al Khayyat brothers acted as terrorist financiers in an individual capacity, albeit motivated by their connections to the State of Qatar and enabled by their connections to the State of Qatar (whatever that may mean). Rather, the plea in the draft amended Particulars of Claim is of a broader kind. It is that there was a conspiracy to fund the Al Nusra Front *driven by the state of Qatar* in which the defendants were participants, and (it appears) that the Qatari state's terrorist financing was organised through the agency, in particular, of the Bank.

...

34. In my judgment this leaves the defendants in a state of uncertainty. This is not a case, as Mr Emmerson submits in paragraph 34 of his skeleton argument, of the Bank “seeking to take advantage of an opportunity to assert state immunity in circumstances in which it would otherwise be out of time to do so”. Whether it is out of time or not is a separate issue. But the Bank is entitled to advance its state immunity case on the clear understanding of the basis of the case the claimants are actually intending to advance at trial.

35. The Bank is concerned that while the claimants have now reverted to their original Particulars of Claim and Mr Emmerson asserts that they do not, therefore, allege the broader conspiracy plea ... the matters relied upon by the Claimants in correspondence, their witness statements and Mr Emmerson's submissions to the Court at earlier hearings and indeed, his skeleton argument for this hearing all suggest that in reality that is indeed the true nature of the claimants' case. I have some considerable sympathy with that concern.

36. In the light of these contradictory positions, in my judgment it is critical that the defendants are properly informed of the case which they will have to meet at trial. Indeed, this was

the very point that Mr Justice Chamberlain made clear in his judgment at the directions hearing to which I have already referred.

...

37. The Claimants' case, in my judgment, cries out for clarification, particularly in the light of the advancement of a serious plea of conspiracy or something akin to conspiracy, and because it is now being said that this claim does not raise the same issues as the Hashwah claim when the Claimants had originally said that the witness evidence in that case would be relied upon in this case (because the allegations were the same).

...

40. Accordingly, I consider in the light of Claimants' change of case and in the light of the unusual circumstances of this case, which I have outlined in this judgment, that the Third Defendant should be given the opportunity to ask for further information of the original Particulars of Claim in order that the precise ambit of the case to be advanced at trial by the claimants is clearly defined and understood."

Calver J made an order reflecting the conclusions at paragraph 40 of his judgment, and also vacated the hearing date for the *forum non conveniens* application. The Bank's request for Further Information was served on 6 October 2021. The Claimants responded on 29 October 2021.

14. Calver J's order made provision for a directions hearing to determine (a) "whether it is arguable that state immunity applies"; (b) "if not, whether it is arguable it has not been waived" and; (c) if necessary, the directions needed to get to a hearing on the *forum non conveniens* application (i.e., the application originally listed for hearing in November 2020). Following service of the Claimants' Further Information the Bank filed the application notice dated 11 November 2021. That is an application to strike out the Particulars of Claim and to dismiss the case against the Bank. The hearing before me was the hearing of that application, and also of the issue identified by Calver J at (a) above. The waiver issue that the Claimants pursued is not, for present purposes, a live issue.

## **B. Decision**

### **(1) The application to strike out**

15. The application to strike out is directed to the Claimants' original Particulars of Claim as supplemented by the Further Information served on 29 October 2021. In the Application Notice, the application to strike out is put on two bases: (a) because the Particulars of Claim disclose no reasonable grounds for bringing the claim; and (b) on the ground that the proceedings are an abuse of process. At the hearing, Ms Brown QC,

for the Bank, accepted that on the assumption that the matters pleaded by the Claimant were true they did disclose reasonable grounds for bringing the claims for damages. But she submitted that a case could also be struck out on the “no reasonable grounds” basis if it was evidentially incoherent. That may be so, but in this case the substance of the Bank’s application is better captured by the abuse of process rubric. At the hearing, Ms Brown accepted that and her submissions were directed to striking out the Particulars of Claim as an abuse of process.

16. The hearing took place in parts, on 1 and 2 March 2022, and then on 29 March 2022. This was because I adjourned the hearing on 2 March 2022 to give the Claimants an opportunity to formulate, file and serve new proposed Amended Particulars of Claim.
17. During the first part of the hearing the focus of the submissions was the Claimants’ responses to the request for Further Information. The nature of that response is apparent from paragraphs (2) – (4) of the “Introduction” the material parts of which are as follows:

“(2) For the purposes of this Response, and the answers that follow:

...

(b) The Claimants have elected to confine their case strictly to the allegations advanced in the (original unamended) Particulars of Claim ... The Claimants in this claim will not advance any broader claim such as that advanced by the (different claimants) in Claim No. CL-2021- 332 (the Hashwah Proceedings). The draft Amended Particulars of Claim in the present proceedings ... have been withdrawn in their entirety and will play no part in the case to be advanced.

(c) ... for the avoidance of doubt, the Claimants disavow any assertion made in correspondence or written/oral submissions that seeks to go beyond the scope of the case as originally pleaded. The Claimants accept and aver that they will be bound at trial by the case set out in the original Particulars ...

(3) For the purposes of the present case, the Claimants have elected to confine their allegations against the Defendants to an allegation that they participated in terrorist funding arrangements in their individual (whether that be personal or corporate) capacities, on the factual premise that these were arrangements unauthorised by the Emir of the State of Qatar, which involved dishonest and corrupt misappropriation of funds (including state funds) by individuals acting without the authority (or purported authority) of the State.

(4) The claimants further confirm, without prejudice to (2) above, that for the sole purpose of answering the Defendants’

*forum non conveniens* challenge, they intend to adduce evidence (for which permission has been given) relating to attempts to pervert the course of justice in these proceedings. That evidence (or parts of it) indicates or involves allegations that attempts were made by individuals or entities claiming to be associated with the State of Qatar or on its behalf, to coerce and/or bribe witnesses and intermediaries in these proceedings and to discover the identities of the Claimants. These allegations are strictly relevant and admissible only as regards Defendant's jurisdictional challenge. They do not form part of the substantive claim to be pursued at trial, which will proceed in accordance with the original particulars."

18. Thus, in summary, the Claimants' position was: (a) that the substantive case was now "confined" to the premise that the moneys used to fund Al Nusra Front had been "misappropriated" from the Qatari state (i.e. the alternative case pleaded in the Hashwah litigation); but (b) for the purposes of responding to the *forum non conveniens* application, the Claimants would continue to rely on evidence to the effect that there have been attempts to intimidate and bribe witnesses by Qatari state officials because the Qatari state is implicated in the proceedings, such evidence showing that a fair hearing of the claims would not be possible before the Qatari courts.
19. In these circumstances, the first part of the Bank's submissions was to the effect that the Further Information served on 29 October was not further information of the Claimants' pleaded case. As asserted in correspondence in August 2021 the Claimants' pleaded case (i.e. the Particulars of Claim as originally filed) comprised the contention that the Qatari state was involved in funding the Al Nusra Front. However, the Further Information asserted a different case, that the Qatari State was not involved in the funding arrangements but rather was a victim of those arrangements because Qatari state funds had been misappropriated and diverted to Al Nusra Front ("the misappropriation case"). The Bank submitted that the misappropriation case was advanced on a "false factual premise". This submission was made by reference to a witness statements already served in these proceedings by the Claimants. In various parts, that evidence contains assertions to the effect that the Qatari state was party to the arrangements to fund Al Nusra Front. The Bank submitted that in light of that evidence, the Claimants could not advance an inconsistent case – i.e., the misappropriation case. To do so was an abuse of process, alternatively the case being advanced was evidentially incoherent and for that reason did not rest on reasonable grounds. On either basis, the case should be struck out.
20. The second part of the Bank's submission focused on the apparent inconsistency between the Claimants' case as explained in the Further Information and the case they intended to advance in response to the *forum non conveniens* application. The point here was that it appeared that one case would be advanced for the purpose of contending the case should be heard in England (the case that the Qatari state was involved in the funding arrangements), but that a contrary case would then be advanced at the merits hearing (the misappropriation case). This too, submitted the Bank, pointed to the conclusion that the Claimants' pursuit of their claim entailed an abuse of process.



21. I accepted the part of the Bank's submission that the 31 October 2021 Further Information (and the misappropriation case it sets out) was not further detail of the Claimants' case as pleaded in the Particulars of Claim, but instead detail of a different case, which had not been pleaded. As matters had turned out, the entirely understandable approach taken by Calver J aimed at ensuring clarification of the pleaded case, had not served that purpose. Rather, the Further Information had raised further uncertainty about the factual scope of the Claimants' case.
22. I adjourned the hearing to permit the Claimants a final opportunity to provide a clear statement of case, this time in the form of a second attempt at draft Amended Particulars of Claim.
23. Draft Amended Particulars of Claim were filed on 11 March 2022, together with an Application Notice seeking permission to amend. The objective of the draft Amended Particulars of Claim is captured by the proposed new paragraph 9 which reads as follows:

“9. The Claimants in these proceedings allege that the Defendants participated in terrorist funding arrangements in their individual (whether that be personal or corporate) capacities. In that regard:

(1) The Claimants' claims do not implead the State of Qatar nor any servant, official or agent of the State of Qatar. The Claimants advance no positive case with respect to authorisation of the terrorist funding arrangements by the State of Qatar, which is in any event immaterial to the cause of action as against the Defendants under Syrian law.

(2) In the absence of (i) any positive case of state authorisation by the Claimants; and (ii) any responsive assertion or evidence of state authorisation by the Defendants, it is a necessary inference that any funds which flowed from the State of Qatar to the Defendants (and were subsequently transferred to terrorist organisations in Syria) were misappropriated.”

Put very shortly, this paragraph makes it clear that the Claimants' case is the misappropriation case.

24. In consequence of this position, a number of passages in the Particulars of Claim are deleted. Some matters are added: the material additions proposed are (a) a new paragraph 48 (which concerns the Second Defendant), (b) a new paragraph 52(2) (on arrangements made by the Bank for cash withdrawal facilities), and (c) a new paragraph 54 (an allegation that two of the Bank's board members made payments to Al Nusra Front, though not through the Bank's own systems). In their skeleton argument (dated 25 March 2022) for the resumed hearing, the Claimants stated they would no longer seek to rely on a number of the responses within Further Information dated 29 October 2021. During the hearing I suggested to Mr Emmerson QC (counsel for the Claimants) that other responses within the Further Information would also be overtaken by the proposed Amended Particulars of Claim, in particular by the statement of position at

paragraph 9. He agreed. Thus, the Claimants have abandoned their reliance on the following responses: 4(1), 13 – 22, 25, 27, 36, 42 – 43, 47 – 59, 65 – 84, 88 – 89, and 98 – 108.

25. The Claimants also addressed the witness evidence filed to date. The Claimants have forsworn reliance on parts of statements that are inconsistent with the misappropriation case: see the Skeleton Argument dated 25 March 2022, at paragraph 8. Lastly on this point, the Claimants accept that the expert evidence already served in connection with the *forum non conveniens* application will need to be reconsidered. Permission may be sought to rely on further expert evidence: see the Skeleton Argument at paragraphs 9-10.
26. Notwithstanding these matters, the Bank maintains its application to strike out. The Bank submits the misappropriation case cannot properly be advanced because it is premised on a selective approach to the evidence already available to the Claimants. The Bank submits that if all the evidence available to the Claimants is considered (i.e. all the evidence in the witness statements filed and served to date), not only is it not possible to draw the inference pleaded at paragraph 9(2) of the proposed Amended Particulars of Claim (that funds were misappropriated from the Qatari state) rather, the only inference that could be drawn is in precise contradiction of that misappropriation case (i.e. that the Qatari state actively sought to make its funds available to Al Nusra Front). This being so, the application to amend should be refused and the Claimants' original Particulars of Claim should be struck out, for the reasons the advanced at the first part of the hearing.
27. I do not accept that analysis. The issue raised by the Bank comes forward in somewhat unusual circumstances. The Bank is only able to make the submission it does because the course the proceedings have taken to date has prompted the Claimants to file a significant amount of evidence even before any of the Defendants has filed a defence to the claim. It is also true that the Claimants' position has vacillated, responding in one fashion to the *forum non conveniens* application, and then retreating in the face of the state immunity application. Be that as it may, I must assess the Bank's submission in light of all the available evidence.
28. I consider it is too soon to know if there is necessary inconsistency between the case as put in the proposed Amended Particulars of Claim and the totality of evidence. The case now pleaded is the misappropriation case. The premise of the Bank's inconsistency submission is that parts of the evidence available to the Claimants are consistent, and only consistent, with the conclusion that the Qatari state participated in the steps taken to fund Al Nusra Front, not that it was a victim of those events. The Bank says the Claimants have selectively discarded the evidence that is consistent only with the conclusion of state involvement. Ms Brown relies on what is said at section 14 (1) of the 1978 Act as to what counts for this purpose as "the state":

**"14 – States entitled to immunities and privileges**

- (1) The immunities and privileges conferred by this Part of this Act apply to any foreign or commonwealth State other than the United Kingdom; and references to a state include references to –

- (a) the sovereign or head of that State in his public capacity;
- (b) the government of that State; and
- (c) any department of that government,

but not to any entity (hereafter referred to as a “separate entity”) which is distinct from the executive organs of the government of the State and capable of suing or being sued.”

29. Whether some or all of the persons concerned, referred to in the evidence which the Claimants no longer seek to rely on are to be taken as actors within the scope of section 14(1) will be a matter of evidence, including evidence as to the authority on which they acted. This evidence will determine whether the conclusion to be drawn from the matters set out in the totality of the Claimants’ evidence is that the Qatari state was “victim” of events or itself a perpetrator. For now, any/all of this is unknown. That being so, there is no necessary inconsistency between the case as now put in the proposed Amended Particulars of Claim and the totality of the evidence to date. The same matters also address the criticism levelled by the Bank that the Claimants’ position in response to the *forum non conveniens* application is inconsistent with their pleaded substantive case.
30. In the premises, I grant the Claimants permission to amend the Particulars of Claim to the extent of the draft Amended Particulars of Claim filed with the with the 11 March 2022 Application Notice. The claim can now proceed on the basis of the pleading in that form, and on the basis that the Claimants have abandoned reliance on parts of the Further Information dated 29 October 2021 listed above at paragraph 24 and the parts of the evidence referred to at paragraph 25 above. The Bank’s application to strike out the claim is refused.

(2) *Whether the Bank’s state immunity application is unarguable*

31. Ms Brown accepted that if I granted the Claimants’ application for permission to amend, the present state immunity application would need to be reconsidered and would not be pursued in its present form. That being so, I do not need to decide whether the application as presently formulated raises an arguable case.

**C. Disposal**

32. The Bank’s application to strike out the Claimants’ case is refused. There is now no need to decide whether the state immunity application made in the 27 July 2021 Application Notice is an arguable application. The Claimants have permission to amend their Particulars of Claim in the form attached to the 11 March 2022 Application Notice. The claim will now proceed on the basis of that pleading.
33. There was some discussion at the hearing as to whether the parts of the Further Information and the witness evidence no longer relied on should be struck out. I do not consider that step is either necessary or appropriate. The Claimants’ position so far as

concerns that evidence and those particulars is now clear. It may be that as the litigation progresses, the Bank (or either the First or Second Defendant) may wish to rely on parts of that information. That being so, the parts the Claimants no longer rely on should not be struck out.

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