

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

71649

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson
Circuit Court Judge

Case No.: 2012-CP-26-8652

TriStar Investors, Inc., Minerva Realty, LLC, and
Angeline Johnson,Appellants

v.

The Horry County Council and American Towers, LLC.....Respondents

Appellate Case No. 2013-001178

**RESPONDENT THE HORRY COUNTY COUNCIL'S
MOTION PURSUANT TO RULES 240 AND 260,
SCACR, FOR DISMISSAL OF APPEAL**

Emma Ruth Brittain, Esquire
Thomas & Brittain, P.A.
Post Office Box 1290
Myrtle Beach, South Carolina 29578
(843) 692-2628
ATTORNEYS FOR RESPONDENT
THE HORRY COUNTY COUNCIL

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SC Court of Appeals

2

This Respondent, Horry County Council (“Respondent Horry County” or “Respondent”), mailed the Initial Brief and Designation of Matter to the Court and served the Appellants’ counsel on January 6, 2014. (See Attachment A).

Appellants’ Initial Reply Brief was received by Respondent Horry County on January 28, 2014. Rule 210(a) of the SCACR states “within thirty (30) days after service of the last brief, the appellant shall serve a copy of the Record on Appeal on each party who has served a brief.” The thirty (30) day deadline in which to serve the Record on Appeal was February 27, 2014. On March 5, 2014, Respondent checked the South Carolina Appellate Case Management System to determine if the Record on Appeal had been filed because it had not been received, and it had not been entered into the website at that time. (See Attachment B, a screen shot copied from the South Carolina Appellate Case Management System website on 3/5/14).

Unbeknownst to counsel for Respondent Horry County, Appellants’ counsel served counsel for Respondent American Towers, LLC with the Record on Appeal by mail on February 26, 2014. (See Attachment C, a copy of a letter obtained from the South Carolina Appellate Case Management System on 3/18/14). The Appellants’ Proof of Service, included in Attachment D, only lists the attorneys for Respondent American Towers, LLC. Appellants failed to serve Respondent Horry County with the Record on Appeal in the instant action even though Respondent Horry County has been a party of record to this action since the December 5, 2012. Moreover, the South Carolina Appellate Case Management System website lists each attorney of record including Respondent Horry County Council’s for the

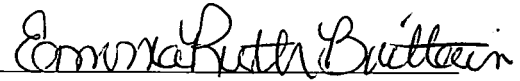
instant action (See Attachment B).

Respondent Horry County Council's counsel has experienced prior difficulties with service of documents by Appellants in this matter. An e-mail was sent from Respondent's counsel on August 8, 2013, to Appellant's counsel, notifying counsel of non-receipt of documents, including the Notice of Appeal. (See Attachment E). On August 7, 2013, Respondent Horry County notified Appellants' counsel that said Respondent had not received a copy of their May 24, 2013, request for transcript to the court reporter as required by Rule 207, SCACR. (See Attachment F). On May 23, 2013, the Appellants' Motion for Supersedeas was hand delivered to Respondent's County Attorney client instead of serving it on the Respondent's counsel of record. (See Attachment G, a copy of an e-mail from County Attorney forwarding Motion for Supersedeas to Respondent's counsel).

Based on the above, counsel for Respondent Horry County respectfully requests that the appeal of this action be dismissed on the grounds that Appellants have failed to comply with the requirements of the South Carolina Appellate Court Rules, as set forth herein, and that such dismissal is appropriate pursuant to the provisions of Rule 260(a), SCACR.

In the event the Court determines dismissal is not appropriate, Respondent Horry County requests that Appellants be ordered to pay its costs and fees in filing this motion, and that it be granted an appropriate extension of time for filing its Final Brief once it has been served with the Record on Appeal by Appellants.

Respectfully submitted,



Emma Ruth Brittain, Esquire

Thomas & Brittain, P.A.

Post Office Box 1290

Myrtle Beach, South Carolina 29578

(843) 692-2628

ATTORNEYS FOR RESPONDENT

THE HORRY COUNTY COUNCIL

ATTACHMENT A

THOMAS & BRITTAIN, P.A.

ATTORNEYS AT LAW

1314 PROFESSIONAL DRIVE

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EMMA RUTH BRITTAIN*
ERBrittain@MYRlaw.com

TELEPHONE (843) 692-2628

FACSIMILE (843) 692-0928

MAILING ADDRESS:
POST OFFICE BOX 1290
MYRTLE BEACH, SC 29578

*CERTIFIED EMPLOYMENT
& LABOR LAW SPECIALIST

January 6, 2014

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: TriStar Investors, Inc., Minerva Realty, LLC and Angeline Johnson v.
The Horry County Council and American Towers, LLC
Civil Action No.: 2012-CP-26-8652
Appellate Case No: 2013-001178

Dear Ms. Kitchings:

Our firm represents The Horry County Council in the above-referenced matter. Please find enclosed for filing the Respondent The Horry County Council's Initial Brief and Designation of Matter in this case. Please return a clocked copy of the documents to our office in the enclosed self-addressed stamped envelope.

Please do not hesitate to contact our office if you have any questions.

Sincerely yours,

THOMAS & BRITTAIN, P.A.



Emma Ruth Brittain

ERB/kwn
Enclosures

cc: Susan P. MacDonald, Esquire
Michael J. Anzelmo, Esquire
David C. Slough, Esquire
Thomas C. Brittain, Esquire
A. Preston Brittain, Esquire
Jonathan L. Yates, Esquire
Arrigo P. Carotti, Esquire, Horry County Attorney

ATTACHMENT B

South Carolina Appellate Case Management System

CLERK'S OFFICE
SUPREME COURT
COURT OF APPEALS

C-Track, the browser based CMS for Appellate Courts

Appellate Case No. ...

Cases

Case Search

Participant Search

Disclaimer: The information and documents available here should not be relied upon as an official record of action. Only filed documents can be viewed. Some documents received in a case may not be available for viewing. Some documents originating from a lower court, including records and appendices, may not be available for viewing.

Case Information: 2013-001178

Court:	Court of Appeals	Classification:	Appeal - Common Pleas - Other
Short Title:	TriStar Investors v. The Horry County Council View Full Title	Case Status:	Held in Abeyance
Consolidated:			
Filed Date:	05/22/2013	Oral Argument Date:	
Disposition Date:		Disposition Type:	
Remittitur Date:			
Lower Court or Tribunal:	Horry (2012CP2608652)		

- Party Information






Appellate Role	Party Name	Former	Attorney(s)
Appellant	Angeline Johnson	N	Susan Pardue MacDonald James Christopher Clark (Former) Michael J. Anzelmo L. Morgan Martin
Appellant	Minerva Realty, LLC	N	Susan Pardue MacDonald James Christopher Clark (Former) Michael J. Anzelmo L. Morgan Martin
Appellant	TriStar Investors, Inc.	N	Susan Pardue MacDonald James Christopher Clark (Former) L. Morgan Martin David C. Slough Thomas C. Brittain Andrew Preston Brittain
Respondent	American Towers, LLC	N	Jonathan L. Yates Thomas S. Tisdale, Jr. Elbert Stockman Dorn, Sr. Tanya Amber Gee Jason S. Smith
Respondent	The Horry County Council	N	Emna Ruth Brittain J. Jackson Thomas

Views

Display:

Event Information

Filed Date	Event Information	Doc
02/20/2014	Non-Dispositional Decision - Order	
01/30/2014	Motion - Relieve / Withdraw / Substitute as Counsel	
01/27/2014	Initial Brief - Reply	
01/22/2014	Non-Dispositional Decision - Extension Granted	
01/09/2014	Motion - Extension of Time (1st)	
01/09/2014	Designation of Matter - Designation of Matter Filed	
01/09/2014	Initial Brief - Respondent (Horry County Council)	
01/06/2014	Designation of Matter - Designation of Matter Filed	
01/06/2014	Initial Brief - Respondent (American Towers, LLC)	
12/06/2013	Non-Dispositional Decision - Extension Granted	
12/06/2013	Non-Dispositional Decision - Extension Granted	
12/05/2013	Non-Dispositional Decision - Extension Granted	
12/05/2013	Motion - Extension of Time (2nd) RIB/DOM American Towers)	
12/03/2013	Motion - Extension of Time (2nd) Horry County Council)	
11/18/2013	Correspondence - Outgoing	

11/13/2013	Non-Dispositional Decision - Extension Granted	
11/01/2013	Motion - Extension of Time (1st) (Horry County Council)	
11/01/2013	Motion - Extension of Time (1st) (RIB/DOM of American Towers)	
10/07/2013	Designation of Matter - Designation of Matter Filed	
10/07/2013	Initial Brief - Appellant 	
09/18/2013	Non-Dispositional Decision - Extension Granted	
09/06/2013	Motion - Extension of Time (1st) (AIB/DOM)	
08/29/2013	Transcript Documents - Transcript Ordered	
08/09/2013	Transcript Documents - Transcript Delivered - Direct Appeal	
08/02/2013	Transcript Documents - Notification that Transcript has not been Received	
07/31/2013	Correspondence - Outgoing (Transcript OverDue)	
06/27/2013	Deficiency - Correction	
06/17/2013	Motion - Return (Horry Co. Council)	
06/13/2013	Non-Dispositional Decision - Order	
06/12/2013	Motion - Reply	
06/11/2013	Deficiency - Deficiency Letter Sent	
06/11/2013	Motion - Return (American Towers)	
06/07/2013	Non-Dispositional Decision - Order	
06/06/2013	Motion - Stay / Supersedeas (including lifting of automatic stay) (Expedited)	
06/05/2013	Non-Dispositional Decision - Order	
06/03/2013	Motion - Stay / Supersedeas (including lifting of automatic stay)	
06/03/2013	Notice of Appeal (Civil) - Initial	
05/28/2013	Transcript Documents - Transcript Ordered	

ATTACHMENT C

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.255.9024
www.nelsonmullins.com

Michael J. Anzelmo
Tel: 803.255.9312
Fax: 803.255.9024
michael.anzelmo@nelsonmullins.com

February 26, 2014

Thomas S. Tisdale, Esquire
Johnathan L. Yates, Esquire
Jason S. Smith, Esquire
Hellman Yates & Tisdale PA
King & Queen Building
145 King Street, Suite 102
Charleston, SC 29401

David C. Slough, Esquire
Nexsen Pruet, LLC
1101 Johnson Avenue, Suite 300
Myrtle Beach, SC 29577

RE: TriStar Investors, Inc., Minerva Realty, LLC, and Angeline Johnson v. The
Horry County Council, and American Tower Corporation
Civil Action No. 2012-CP-26-08652
Our File No. 39776/01501

Dear Gentlemen:

Pursuant to Rule 210, SCACR, we enclose and serve upon you one copy of the Record on Appeal in the above referenced matter.

By copy of this letter to the Honorable Jenny Kitchings, we are enclosing the original and one copy of our proof of service for filing as require. We ask that the clerk, return a clocked copy to us via our courier. Should you have any questions, please do not hesitate to contact me.

Very truly yours,



Michael J. Anzelmo

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FEB 26 2014

SC Court of Appeals

Myrtle Beach, SC 29577

February 26, 2014

Page 2

MJA:mws

Enclosures

cc: Honorable Jenny Kitchings, Clerk South Carolina Court of Appeals

ATTACHMENT D

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2012-CP-26-8652
Appellate Case No. 2013-CP-26-08652

TriStar Investors, Inc., Minerva Realty, LLC, and
Angeline Johnson, Appellants,

v.

The Horry County Council and American Towers,
LLC, Respondents.

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellants Tristar Investors, Inc., Minerva Realty, LLC and Angeline Johnson, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: RECORD ON APPEAL - TWO VOLUMES

Counsel Served:

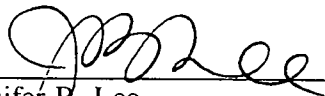
David C. Slough, Esquire
Nexsen Pruet, LLC
1101 Johnson Avenue, Suite 300
Myrtle Beach, SC 29577
Attorneys for Defendant American Tower, LLC

Jonathan L. Yates, Esquire
Hellman Yates & Tisdale, PA
145 King Street, Suite 102
Charleston, SC 29401
Attorneys for Defendant American Tower, LLC

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FEB 26 2014

SC Court of Appeals



Jennifer B. Lee
Administrative Assistant

February 26, 2014

ATTACHMENT E

Kim Nobles

From: Emma Ruth Brittain
Sent: Thursday, August 08, 2013 1:56 PM
To: Tereasa Nelson
Cc: Susan MacDonald
Subject: RE: Tristar Investors, et al. v. The Horry County Council, et al.

Teresa,

This is one of several items I have not received from Susan In this case-including service of the notice of appeal. It is my understanding that David Slough also did not receive a copy of the letter to the court reporter. Additionally, one filing was served on my client (the County) instead of me. Can you check the mailing and e-mail addresses you are using for me?

Thanks,
Emma Ruth

From: Tereasa Nelson [<mailto:tereasa.nelson@nelsonmullins.com>]
Sent: Thursday, August 08, 2013 12:29 PM
To: Susan MacDonald; Emma Ruth Brittain; Kim Nobles
Cc: dslough@nexsenpruet.com; edorn@nexsenpruet.com; jly@hellmanyates.com; carottia@horrycounty.org; tommy@brittainlawfirm.com; carterj@horrycounty.org
Subject: RE: Tristar Investors, et al. v. The Horry County Council, et al.

Please see copy of attached letter you requested.

Nelson Mullins

Tereasa Nelson
Administrative Assistant
tereasa.nelson@nelsonmullins.com

Nelson Mullins Riley & Scarborough LLP

BNC Bank Corporate Center, Suite 300
3751 Robert M. Grissom Parkway
Myrtle Beach, SC 29577
Tel: 843.429.5724
www.nelsonmullins.com

From: Susan MacDonald
Sent: Wednesday, August 07, 2013 4:53 PM
To: Tereasa Nelson
Subject: FW: Tristar Investors, et al. v. The Horry County Council, et al.

Please send a copy

Susan P. MacDonald
Nelson Mullins Riley & Scarborough, LLP
3751 Robert Grissom Parkway, Suite 300
Myrtle Beach, SC 29577
Direct Dial 843.946.5654

Fax 843:946.5641

From: Kim Nobles [mailto:knobles@myrlaw.com]

Sent: Wednesday, August 07, 2013 4:52 PM

To: Susan MacDonald

Cc: dslough@nexsenpruet.com; edorn@nexsenpruet.com; jly@hellmanyates.com; tommy@brittainlawfirm.com; Carotti, Arrigo; carterj@horrycounty.org

Subject: Tristar Investors, et al. v. The Horry County Council, et al.

Attached for your review is a letter from Mrs. Emma Ruth Brittain regarding the above-referenced matter.

Kim

Kim Nobles
Assistant to Emma Ruth Brittain, Esquire
Thomas & Brittain, P.A.
Post Office Box 1290
Myrtle Beach, South Carolina 29578
Telephone: 843-692-2628
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If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

To ensure compliance with the requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including the attachments) is not intended or written to be used, for the purpose of (a) avoiding penalties under the Internal Revenue Code or (b) promoting, marketing or recommending to another party any transaction or tax-related matter[s]. To provide you with a communication that could be used to avoid penalties under the Internal Revenue Code will necessarily entail additional investigations, analysis and conclusions on our part.

ATTACHMENT F

THOMAS & BRITTAIN, P.A.
ATTORNEYS AT LAW
1314 PROFESSIONAL DRIVE
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TELEPHONE (843) 692-2628

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MYRTLE BEACH, SC 29578

EMMA RUTH BRITTAIN
ERBrittain@MYRlaw.com

*CERTIFIED EMPLOYMENT
& LABOR LAW SPECIALIST

August 7, 2013

Susan P. MacDonald, Esquire
Nelson Mullins Riley & Scarborough
Post Office Box 3939
Myrtle Beach, South Carolina 29577

Re: Tristar Investors, Inc., Minverva Realty, LLC and Angeline Johnson vs.
The Horry County Council and American Tower Corporation
Civil Action No.: 2012-CP-26-8652

Dear Susan:

Please be informed that we did not receive a copy of your May 24, 2013, request for transcript to Mr. Henry P. Young as required by Rule 207, SCACR. Please kindly provide us with a copy of the initial request as well as any other correspondence with the court reporter.

I look forward to receipt of the correspondence to Mr. Young at your earliest convenience. Please do not hesitate to contact me if you wish to discuss or if you have any questions.

With warm personal regards, I am

Sincerely yours,

THOMAS & BRITTAIN, P.A.



Emma Ruth Brittain

ERB/kwn

cc: David C. Slough, Esquire
Elbert Dorn, Esquire
Jonathan Yates
Arrigo P. Carotti, Esquire
Janet Carter, Planning Director
Thomas C. Brittain, Esquire

ATTACHMENT G

Emma Ruth Brittain

From: Graves, Sanford <GravesS@HorryCounty.org>
Sent: Thursday, May 23, 2013 10:50 AM
To: Carotti, Arrigo; Emma Ruth Brittain
Subject: TriStar (Motion for Supersedeas: attached)
Attachments: 1 TriStar 20130523 motion.pdf; 2 TriStar 20130523 exhibit 1 2.pdf; 3 TriStar 20130523 exhibit 3 final order.pdf

These items were hand delivered to the office of the County Attorney at 10:20 this morning.

Please call if you have any questions.

Sam

Sanford Cox Graves | Chief Deputy County Attorney

Horry County Government

Horry County Attorney's Office

1301 Second Avenue, Conway, South Carolina 29526

Tel 843.915.7416 | Fax 843.915.6270 | gravess@horrycounty.org

www.horrycounty.org

All e-mail correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act (FOIA). This correspondence is intended exclusively for the individual or entity to which it is addressed and may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson
Circuit Court Judge

Case No.: 2012-CP-26-8652
Appellate Case No.: 2013-001178

TriStar Investors, Inc., Minerva Realty, LLC, and
Angeline Johnson Appellant

v.

The Horry County Council and American Towers, LLC Respondents

PROOF OF SERVICE

I, Kimberly W. Nobles, legal assistant for the attorney representing Respondent
The Horry County Council, hereby certify that I have served all counsel in this action
with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by
United States Mail, postage prepaid, to the following address(es):

Pleadings:

Respondent The Horry County Council's Motion Pursuant to Rules 240 and 260,
SCACR, For Dismissal Of Appeal

RECEIVED

MAR 21 2014

SC Court of Appeals

Counsel Served:

Susan P. MacDonald, Esquire
Nelson, Mullins, Riley & Scarborough, LLP
3751 Robert M. Grissom Parkway I Suite 300
Post Office Box 3939 (29578-3939)
Myrtle Beach, South Carolina 29577-3165

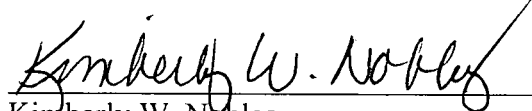
Michael J. Anzelmo, Esquire
Nelson, Mullins, Riley & Scarborough, LLP
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Columbia, South Carolina 29201
Attorneys for Appellants TriStar Investors, Inc.,
Minerva Realty, LLC, and Angeline Johnson

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Elbert S. Dorn, Sr., Esquire
Tanya A. Gee, Esquire
Nexsen Pruet, LLC
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Attorneys for Defendant American Tower, ILC

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A. Preston Brittain, Esquire
The Brittain Law Firm, P.A.
4614 Oleander Drive
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Thomas S. Tisdale, Jr., Esquire
Jason S. Smith, Esquire
Hellman Yates & Tisdale, PA
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Charleston, SC 29401
Attorneys for Defendant American Tower, LLC



Kimberly W. Nobles
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March 18, 2014

THOMAS & BRITTAIN, P.A.

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*CERTIFIED EMPLOYMENT
& LABOR LAW SPECIALIST

March 18, 2014

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: TriStar Investors, Inc., Minerva Realty, LLC and Angeline Johnson v.
The Horry County Council and American Towers, LLC
Civil Action No.: 2012-CP-26-8652
Appellate Case No: 2013-001178

Dear Ms. Kitchings:

Our firm represents The Horry County Council in the above-referenced matter. Please find enclosed for filing the original and six copies of Respondent The Horry County Council's Motion Pursuant to Rule 240 and 260, SCACR, for Dismissal of Appeal in this case. Please return a clocked copy of the document to our office in the enclosed self-addressed stamped envelope. Also enclosed is our fee in the amount of \$25.00.

Please do not hesitate to contact our office if you have any questions.

Sincerely yours,

THOMAS & BRITTAIN, P.A.



Emma Ruth Brittain

ERB/kwn

Enclosures

cc: Susan P. MacDonald, Esquire
Michael J. Anzelmo, Esquire
L. Morgan Martin, P.A.
David C. Slough, Esquire

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MAR 21 2014

SC Court of Appeals

Elbert S. Dorn, Sr., Esquire
Tanya A. Gee, Esquire
Thomas C. Brittain, Esquire
A. Preston Brittain, Esquire
Jonathan L. Yates, Esquire
Thomas S. Tisdale, Jr., Esquire
Jason S. Smith, Esquire
Arrigo P. Carotti, Esquire, Horry County Attorney

UNITED STATES POSTAGE
PITNEY BOWES
02 1P \$ 006.480
0003143419 MAR 18 2014
MAILED FROM ZIP CODE 29577



THOMAS & BRITAIN, P.A.
POST OFFICE BOX 1290
MYRTLE BEACH, S.C. 29578

To:
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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