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SC SUPREME COURT

State of South Carolina
County of Aiken

Court of Common Pleas

IN RE: The Estate of)
James Brown, A/K/A)
James Joseph Brown) Transcript of Record
) 2013-CP-02-02849
) 2013-CP-02-02850
) 2013-CP-02-02851
) 2013-CP-02-1647

March 31, 2014
Bamberg, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

A P P E A R A N C E S:

A. Peter Shahid, Jr., Esquire
Attorney for Stephen Slotchiver

John F. Beach, Esquire
Attorney for David C. Sojourner, Jr.

Robert N. Rosen, Esquire
Attorney for Tommie Rae Brown

William Barr, Esquire
Attorney for Janette Mitchell

Louis Levenson, Esquire
Attorney for Brown Heirs

Bethanie K. Patterson
Circuit Court Reporter

1 know is if someone brings the --

2 THE COURT: All right. Mr. Barr, I'm going to
3 give you 20 days to amend your submission to me to
4 include what agreement that you're referring to that
5 would have caused her to sort of be lulled, quote,
6 unquote, into not seeking some type of adjudication
7 within the statutory timeframe. And I'll hold it in
8 abeyance to let you get me that within 20 days, and
9 then I'll rule on it after, whatever you submit to
10 me. All right?

11 MR. BARR: All right.

12 THE COURT: Anything else by anyone on that
13 issue?

14 The last one is the diary question. All right.
15 This is the motion by Mr. Sojourner in his capacity
16 to amend the -- or modify the protective order
17 related to the diary. And as I understand, they
18 want access to the diary for purposes of defending
19 the Estate in the various litigations going in, but
20 they acknowledge that it should be subject to a
21 protective order as outlined in their motion.

22 Mr. Rosen has, first off all, said, no,
23 shouldn't be given to anybody because it was
24 allegedly stolen from the house and she was barred
25 from going back in until she came before me and I

1 allowed her back in. But if that's -- and has some
2 type of common law and/or privilege that would
3 preclude the submission of the diary for these
4 proceedings.

5 In the alternative, in the event that I say it
6 should be subject to discovery in this litigation,
7 that the protective order should include a
8 confidentiality provision that he sets out in his
9 motion to protect the contents of that diary being
10 disseminated in any manner whatsoever other than for
11 the purposes of this litigation and then to be
12 returned back to Ms. Tommie Rae Brown at the
13 conclusion of all of this -- is that sort of where
14 we are?

15 MR. ROSEN: Yes, sir.

16 THE COURT: Mr. Rosen, what common law -- you
17 cite in your memo keeping the diary is protected by
18 both common law and statutory provisions, and then
19 you sort of segue into something else about a 403
20 analysis. Is there a statutory provision that I'm
21 unaware of?

22 MR. ROSEN: No.

23 THE COURT: Privilege?

24 MR. ROSEN: No, there isn't, Your Honor. But I
25 have an argument I want to make on this. I want to

1 hand up to the Court, these are just -- I want to
2 run through a little bit of history of this thing
3 because I think it's important to my argument.

4 THE COURT: Sure.

5 You don't mind that I let him go first, because
6 I'm --

7 MR. BEACH: No.

8 MR. ROSEN: I understand the burden is on me.
9 Your Honor, let me hand these up. I'm not really
10 filing anything; these are things already on file
11 with the Court. I'm really just asking the Court to
12 take judicial notice of its own file. So I'm asking
13 the Court to look at our motion for summary
14 judgment -- I'll explain why that is important in a
15 minute -- filed in October of 2007. How I wish we
16 had proceeded seven years ago, but anyway --

17 THE COURT: Hindsight is 20/20.

18 MR. ROSEN: It always is. Motion for summary
19 judgment, motion for limited discovery, pending
20 motion for summary judgment, or your order. You've
21 probably got your orders all in front of you. These
22 are the orders, motion to require --

23 THE COURT: There's a thousand orders.

24 MR. ROSEN: No. I mean, the orders related to
25 the diary. I've had to go back and relive the whole

1 thing myself, Your Honor. You know the kind of
2 stress that puts on one.

3 THE COURT: That's the main concern of this
4 Court is the stress that Mr. Rosen is under.

5 MR. ROSEN: Well, it should be Your Honor.
6 Anyway, Motion to Require All Prior and Current
7 Personal Representatives to Return the Diaries.

8 Petitioner Tommie Rae Brown's Motion to Return
9 Personal Property -- this is all relevant to the
10 argument I'm going to make -- Motion For Protective
11 Order and Sanctions, Motion For Protective Order
12 Legal Fees, her original affidavit, memorandum in
13 support of her motion, order regarding the diaries,
14 et cetera. This is sort of a -- the history of the
15 thing; not all of it, but --

16 THE COURT: I know the diary has created a lot
17 of angst and --

18 MR. ROSEN: Well, it has, Your Honor. Let me
19 say this: The -- and of course she's filed another
20 affidavit, which Your Honor has. So, I mean, I
21 think what's undisputed, and I think the Court went
22 back -- and I've got transcripts from February 14th,
23 2008, transcripts from February 20th, 2008.
24 Essentially what it amounts to -- and I'll try to
25 say this in a non-argumentative way: When Mr. Brown

1 died, Tommie Rae Brown -- and I know people in here
2 keep referring to her as Tommie Rae Hiney and all
3 these different names, and I wish they would call
4 her by her proper name. But I can't make them be
5 polite, but I'm requesting that they do.

6 She was living with Mr. Brown and she had a
7 ceremonial marriage with Mr. Brown, and as far as
8 Mr. Brown was concerned, they were married. He
9 died. She was in California. She got back, she was
10 locked out of her house, trying to get her stuff,
11 couldn't get her stuff. And we went through about a
12 year of litigation. We went through filing all
13 kinds of motions to get her stuff, which the
14 personal representative -- not these personal
15 representatives, but the personal representative of
16 the Estate.

17 THE COURT: I thought we had a hearing early on
18 that I allowed her to go back in the house and it
19 was on TV and you were out there and --

20 MR. ROSEN: I was on TV and my car was on TV.
21 But more importantly --

22 THE COURT: Didn't she get back in the house?

23 MR. ROSEN: She -- it went on -- I mean, if you
24 go back and look at this, it went on for months and
25 months. And she got back in and they wouldn't let

1 her take her things and they had taken things that
2 we didn't know about. Then later, like a year
3 later, we had to file a motion to get her stuff, and
4 then it was all put in storage. And of course at
5 this point, we didn't even know they had the diaries
6 because that had been hidden from us. And this was
7 all in this record. No one has gone back and looked
8 at it.

9 And basically we had to file all kinds of
10 motions and spend all kinds of time just to get her
11 stuff back. In fact, there's an order ordering
12 Cannon and those people to file an affidavit about
13 exactly how they took the diary, which they order
14 they've never obeyed and never going to obey. But
15 in any event, as best I can piece together the
16 information -- I don't even think there's even
17 anybody in the room that's even going to contest
18 this: Her things were at the house. Whether she
19 was married to him legally or not married, they were
20 living together and her things were there, which
21 they had no right to take; they had no right to take
22 it as evidence, they had no right to take it,
23 period. They may have had a right to store it and
24 give it to her. But they took it, they took it and
25 they carried it away and kept possession of it,

1 which is the definition of larceny, and they invaded
2 her privacy, stole her stuff, and hid it and hid it
3 from the Court and hid it from us, and we spent an
4 enormous amount of time -- in fact, until I went
5 over all this, I had forgotten all the time we spent
6 on it.

7 And then at some point, Wayne Byrd wrote a
8 letter saying, oh, and by the way, we have a diary,
9 which we didn't even know about, and I've given it
10 to everybody and it's been disseminated all over the
11 world, to the lawyers anyway. So what we have is
12 about the most outrageous conduct one can imagine.
13 The woman is living with a man as husband and wife.
14 They say they were not married, I understand that.
15 But she's still a human being, still a citizen of
16 South Carolina, they were still the personal
17 representatives of the estate appointed by the Court
18 with a fiduciary duty to treat people properly, and
19 they took her stuff illegally.

20 And then, despite Court orders and requests,
21 they were not returned. We never knew about a
22 diary. And then all of a sudden -- and this is all
23 in the record -- Mr. Byrd sends out to everybody
24 copies of her diary, which was outrageous and which
25 the Court found to be outrageous. And we then

1 moved, several motions, several orders, to get the
2 diary back. So now the diaries are resting -- the
3 original is in my office which, remarkably, after
4 seven years, I still have them. And -- but in any
5 event, there's copies that were floated around,
6 e-mails and all kinds of things.

7 Now, no one is supposed to have those things,
8 no one. So I don't know -- and I know the personal
9 representatives have never read them because they
10 never had them. They're asking they be produced.
11 And their motion is very to careful to say they want
12 things based on topic areas that they think might be
13 in the diary. But we all know -- I say we all know.
14 I know, I believe, people still have copies of it.
15 So what we have --

16 THE COURT: Well, I haven't heard in a long
17 time that anybody has disseminated any portions of
18 the diary. It hadn't been brought to my attention.

19 MR. ROSEN: It hasn't been brought to my
20 attention either, because if it happened, I'd rule
21 them in in five minutes.

22 THE COURT: I know you would have. And we did
23 have a hearing in Lexington and left it like it was,
24 which is, it's with you and it's not to be used in
25 any manner whatsoever.

1 MR. ROSEN: Well, I'm going to represent to the
2 Court I have the originals, they're in the same
3 condition they were in when they were given to me.
4 And anyway, there's e-mail copies that we have, so,
5 I mean, the actual diaries are there.

6 Now, I don't think the Court should allow
7 anybody to have these diaries, and that's based on
8 Rule 26 (C), protective order. And, you know, I've
9 spent a lot of time doing a lot of research on this,
10 and this is my belief: Upon motion by a party or by
11 the party from whom discovery is sought -- that's
12 us -- and for good cause shown -- and I think I've
13 just articulated to you the good cause. The good
14 cause is, when people break into your -- I say break
15 in. They didn't break into the house; they had a
16 right to go in James Brown's house. But when they
17 come in the house and illegally and maybe criminally
18 take something and then want to use it in
19 litigation, I don't think the Court, which is the
20 court of equity, and this is an equity proceeding,
21 should allow that, period.

22 Upon motion by a party or by a party from whom
23 discovery is sought, and for good cause shown --
24 which I've just shown you -- the Court in which the
25 action is pending, the Court where the deposition

1 has to be taken, may make such order which justice
2 requires -- well, I think justice requires it -- to
3 protect a party, Tommie Rae, from annoyance,
4 embarrassment, oppression or undue burden, including
5 one or more of the following, that discovery not be
6 had. That's what I'm asking for, not be had, and it
7 not be had because the personal representatives have
8 violated the law, have acted highly improperly, have
9 done really terrible things that I think are
10 actionable, and I think that her -- that this should
11 not be done.

12 Now, in addition, she's filed an affidavit
13 saying this: These diaries are random thoughts. At
14 the time they were written, she was in a tumultuous
15 marriage of James Brown -- which is a matter of
16 public record, I mean, you can go on the internet
17 and find this -- and they were fighting and fussing.
18 And one court on the annulment and another court in
19 Aiken on the divorce and all kinds of things are
20 going on, and she's writing her private thoughts,
21 she's also in a 12 Step Program, she was in
22 California at a rehab center; there's things in
23 there literally addressed to God, literally
24 addressed to Jesus, literally written down for her
25 sponsor in AA, and all kinds of things. And, you

1 know, there's no reason for this to even come into
2 this case.

3 And let me go further. There are motions
4 pending to limit the discovery in this case. You
5 know, seven years ago I filed a motion for summary
6 judgment. And my position then and my position now
7 is the same; she's either married to James Brown or
8 she is isn't. And that's a decision for you to make
9 and maybe ultimately for the Supreme Court to make.
10 Whether she's married or not really depends on the
11 law and not the facts. It doesn't really matter
12 what anybody says.

13 In the first instance, either the ceremonial
14 marriage and the annulment of the Javed Ahmed
15 marriage together, the court order of the family
16 court means, under whatever authority you want to
17 take, that the marriage is legal. And if the
18 marriage is legal, we don't need any discovery at
19 all. In fact, I've already got a motion to limit
20 discovery. You already issued an order, actually,
21 limiting discovery in view of the fact that our
22 motion for summary judgment was going to be heard
23 seven years ago. So they don't need the diary; they
24 don't need it because it's not relevant. And the
25 reason it's not relevant is -- and it can't be

1 relevant because either Tommie Rae Brown, when she
2 married James Brown, either was married to Javed
3 Ahmed or she was not married to Javed Ahmed. And
4 there's nothing that anybody can say that can change
5 that because the annulment says she wasn't married,
6 and that order is binding on this Court in my view,
7 not binding on this Court in others'. That's a
8 legal issue. And what I'm trying to say today is --

9 THE COURT: Well, is that motion still viable
10 for summary judgment?

11 MR. ROSEN: Well, I don't know. It was filed,
12 it was never ruled on. But to --

13 THE COURT: A lot of things happened after
14 that.

15 MR. ROSEN: A lot of things happened after
16 that. So probably what I'm going to is file an
17 amended and supplemental motion for summary
18 judgment. I'm going to file a motion for protective
19 order. They've sent me 30 pages of interrogatories
20 and requests to produce, which that's their job, and
21 I'm going to move for a protective order that the
22 discovery not be had at least until the summary
23 judgment motion is heard, because we can take
24 depositions from now till Doomsday, spend \$250,000,
25 fly all over the country, and there's really

1 nothing -- there's no point in it, because either
2 the annulment is a valid annulment and the marriage
3 to James Brown is a valid marriage or it isn't. And
4 I think that's a legal matter for the Court,
5 ultimately.

6 THE COURT: Then why don't you file your motion
7 for summary judgment?

8 MR. ROSEN: That's what I think we ought to do.
9 I don't want to argue it today but, I mean, I would
10 like to argue it.

11 And so --

12 THE COURT: What is your position to let him
13 file that and then depending on how you rule, then
14 it may be needed in discovery? But we don't need
15 the diary for your motion for summary judgment.

16 MR. ROSEN: That's what I'm saying, we don't
17 need the diary.

18 THE COURT: Because it's a legal argument on
19 annulment, and if it was annuled, and if not, could
20 be married to two people at once.

21 MR. ROSEN: Right. The family court issued a
22 final order that's binding on the world, according
23 to us -- is not binding on the --

24 THE COURT: Let me hear from Mr. Beach. It is
25 a -- the diary and the whole surrounding of how the

1 diary was acquired, it's not the most tasteful thing
2 in the world. But on the other side of the coin, if
3 this thing has factual issues that preclude summary
4 judgment, then there may be a lot of stuff in there
5 that could be -- some stuff that may be, I don't
6 know, relevant to the issues at hand. And some of
7 the stuff obviously is not, but it may require
8 in-camera review. I certainly don't want to take on
9 that.

10 MR. BARR: Your Honor, before Mr. Beach starts,
11 I'd like to bring to the Court's attention that I
12 filed a special appearance notice for this motion
13 and the protective order because we were never
14 served on that either.

15 THE COURT: Thank you. When did you file it?

16 MR. BARR: I handed it to the Court this
17 morning.

18 THE COURT: Thank you.

19 MR. BARR: Thank you. I just wanted to get
20 that on the record.

21 THE COURT: Thank you. You're on the record.

22 So if it's truly a legal argument -- and you
23 may not agree with that, Mr. Beach -- but seems to me
24 that if we could hear the motion for summary
25 judgment, depending on how I go with that, then we

1 could hear the diary. If I say, fellows, there's
2 factual issues that's got to be developed, then I
3 think the diary probably should be discoverable
4 after somebody maybe does an in-camera review to
5 determine, obviously, what she's alleging to her 12
6 step people or her religious beliefs probably don't
7 have a thing to do with it if she's in there talking
8 about -- if she is or she isn't, I don't know what
9 she -- I've never seen them, never even looked at
10 them. There may be some things in there that are
11 relevant to this particular litigation and those
12 things may be discoverable. Everything in the
13 diary, I don't know that that's discoverable, so we
14 may need to work around that.

15 But I guess my question is, Mr. Rosen is saying
16 his case rises or falls on a legal argument, seems
17 like to me you'd give him that shot to file it
18 quickly and let's move on it. And then if I rule
19 with it, y'all go Columbia and if I rule against it,
20 y'all go to Columbia. Let's see where we are.

21 MR. BEACH: Well, Judge, we do agree that his
22 case could fall on the question of whether Tommie
23 Rae Brown is the surviving spouse. We think he
24 could lose the case based --

25 THE COURT: Surviving spouse. But to be a

1 surviving spouse, she's got to be a spouse.

2 MR. BEACH: Correct.

3 THE COURT: And to be a spouse, she has to have
4 a valid marriage.

5 MR. BEACH: Exactly. And we think --

6 THE COURT: Is the question --

7 MR. BEACH: I'm sorry.

8 THE COURT: I didn't mean to cut you off.

9 MR. BEACH: No, no.

10 THE COURT: Is the question of the validity of
11 the marriage, is that a legal question or does -- or
12 do you have to develop facts to protect your client
13 on that matter? And you may not want to answer that
14 right now, you may want to think about it. But it
15 seems to me if it's strictly a legal question, then
16 maybe we get around all this discovery and save some
17 money and just hear that motion and then go from
18 there. That's just me thinking out loud a little
19 bit.

20 MR. BEACH: Your Honor, I think the question of
21 whether the decision that was made in the Charleston
22 family court in 2004 -- I think it was April 15th of
23 2004 -- that annulled Tommie Rae Brown's marriage
24 to -- 1997 marriage to Javed Ahmed, the question of
25 whether that under the Lucas decision legally can

1 be -- can relate back, if you will, to the marriage
2 so that it would make her subsequent marriage to
3 James Brown in 2001 valid, that question is, in
4 fact, a legal question, and we agree that that is a
5 legal question.

6 THE COURT: Well, Mr. Rosen, is that sort of
7 where your summary judgment is headed to?

8 MR. ROSEN: Yes, sir. Yeah. Yeah. We have
9 the argument that the annulment is binding and that
10 she's there for the spouse.

11 THE COURT: Well --

12 MR. BEACH: Now, Judge, there are -- that
13 simple question could be a legal question. On the
14 other hand, if Mr. Rosen asserts that the -- if
15 Mr. Rosen asserts that James Brown is estopped by
16 that order, then Mr. Rosen is probably going to have
17 to assert some facts to support that estoppel
18 argument because Mr. Brown --

19 THE COURT: Well, if he does -- if he does
20 that, then I think the summary judgment goes out the
21 window.

22 MR. BEACH: I think so, because Mr. Brown was
23 not a party -- a named party to that case. So the
24 only thing that we can assume Mr. Rosen might argue
25 on that is that Mr. Brown was a de facto party to

1 the case and therefore should be estopped from that.
2 And those are factual questions. So even the
3 question of whether the annulment order is -- bars
4 her claim, could end up turning on some factual
5 decision.

6 THE COURT: Well, here's what I may do,
7 Mr. Beach, in trying to be efficient and not sending
8 you all over the world and spending a quarter of a
9 million dollars, as Mr. Rosen said: I may hold this
10 motion in abeyance for 30 days, giving Mr. Rosen an
11 opportunity, if he chooses to do so, to file a
12 motion for summary judgment, and depending on how
13 that goes, if it's strictly a legal question, that
14 may be dispositive. If it involves factual issues,
15 obviously I would not rule on it; I will say you
16 have to have an opportunity to complete discovery
17 before I rule to determine whether or not there were
18 genuine issues of material fact in dispute.

19 MR. BEACH: Okay.

20 THE COURT: And then depending on how I rule on
21 that, if need be, we'll come back and revisit the
22 production of the Tommie Rae Brown's diary. But my
23 thoughts on that would probably be if there's
24 factual issues involved, that it would be something
25 that would be discoverable, it would be subject to a

1 very strict protective order, and probably would
2 want some type of in-camera review. And since I'm
3 going to be listening to a lot of stuff in this
4 case, I probably might appoint a special person to
5 have the in-camera review so I will not have read
6 all of that other stuff that may not be germane to
7 this. That's sort of going through my mind.

8 MR. BEACH: Well, that is sort of going through
9 our mind too, Your Honor. So we're thinking along
10 the same lines.

11 MR. ROSEN: That sounds very reasonable, Judge.

12 THE COURT: All right. Let's do this:
13 Mr. Rosen, I'll give you 30 days -- I'll give
14 Mr. Rosen 30 days to file a motion for summary
15 judgment, if he intends to do so. If he does not,
16 then I will reconvene this or either issue an order.
17 Mr. Rosen, I think we've made a record of --

18 MR. ROSEN: Thank you.

19 THE COURT: Are we okay with that? I'm sorry.

20 MR. BEACH: Your Honor, I'm sorry, my client
21 was trying to give me some thoughts and --

22 THE COURT: I know you've got a -- I won't
23 comment.

24 I said that I'm going to give Mr. Rosen 30 days
25 to file a motion for summary judgment, and if he

1 files it, we'll have that hearing, hold this in
2 abeyance. If he presents factual issues, I'll just
3 go ahead and rule on what we have here today.

4 But my thoughts are to make it discoverable
5 with a real strict protective order and probably
6 some type of in-camera review, perhaps not by me,
7 but by someone independent with some judicial
8 background so I don't get influenced by what I would
9 read conducting an in-camera review. I don't think
10 I need to be privy to that.

11 MR. BEACH: Okay. And, Your Honor --

12 THE COURT: Is that a workable solution?

13 MR. ROSEN: That's fine.

14 MR. BEACH: The question is, if Mr. Rosen files

15 a motion for summary judgment on his claim and that
16 motion for summary judgment on his claim requires
17 the Court to decide upon factual issues, then we're
18 going to be moving forward with discovery and --

19 THE COURT: That's correct.

20 MR. BEACH: Okay.

21 THE COURT: Because I don't think I would be
22 fair to anybody ruling on summary judgment if there
23 were factual issues to be considered.

24 MR. ROSEN: I can't argue with that, Your
25 Honor.

1 THE COURT: All right. We'll leave it at that.
2 Anything else by anyone?

3 MR. BEACH: Your Honor, I will say this, and
4 this is a point that Mr. Sojourner has raised: We
5 don't think that Mr. Rosen will be able to file a
6 motion for summary judgment in his client's favor
7 under the statutory actions that she has filed
8 without there being factual issues involved because
9 there are several components of the statute that are
10 in addition to just surviving spouse. That's only a
11 threshold requirement.

12 THE COURT: I'm going to give him that shot.

13 MR. BEACH: Yes, sir.

14 MR. ROSEN: Thank you, Your Honor.

15 THE COURT: All right. Gentlemen, ladies,
16 Mr. Barr, please file your motions that you've made
17 mention of here today so they can get on the motion
18 calendar and we can set those for disposition.

19 MR. BARR: Yes, sir. I'm going to mail them;
20 is that all right?

21 THE COURT: That's fine. I'm not telling you
22 how to do it, I'm just saying please do it now.
23 You've also got to serve everybody.

24 MR. BARR: Yes, sir. Well, I served everybody,
25 but I'll re-serve them; is that all right?

1 THE COURT: I'm just saying that you need to.

2 MR. BARR: Okay.

3 MR. LEVENSON: Your Honor, may it please the
4 Court, before we wrap up --

5 THE COURT: Are we on the record or off the
6 record?

7 MR. LEVENSON: On the record, Your Honor. I
8 had filed pro hac vice motions for Mr. Bell in the
9 three new severed cases because they are new case
10 numbers. I hadn't heard any objections from any of
11 the parties, I don't know if there are or not.

12 MR. ROSEN: I just can't think of one. I'm
13 still thinking.

14 THE COURT: He did -- I think you filed a
15 motion, but you did not send me a proposed order.

16 MR. ROSEN: I did not because I did not know
17 whether --

18 THE COURT: All right. Gentlemen, I'm going to
19 sign those, send me the orders. Unless I hear an
20 objection from anybody, I'll sign one day next week.

21 MR. LEVENSON: I'll send them to all the
22 parties when I send them to you. Thank you, Your
23 Honor.

24 THE COURT: Anything else?

25 MR. BARR: Well, I served everybody who I

1 thought --

2 THE COURT: Mr. Barr, I'm not telling you how
3 to do it, I'm just saying that you -- you may have
4 already done it, I don't know.

5 MR. BARR: I was wondering whether that was
6 acceptable or not.

7 THE COURT: I don't -- I don't give advice
8 for --

9 MR. BARR: Okay.

10 MR. LEVENSON: May I be heard on just another
11 scheduling issue?

12 THE COURT: On the record or off?

13 MR. LEVENSON: On the -- well, either one, it
14 doesn't matter.

15 -- END OF PROCEEDINGS --

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