
IN THE SUPREME COURT OF THE UNITED STATES

MARISA CHANILE SMITH,

Petitioner,

v.

SHOMA HOMES AT NAUTICA SINGLE FAMILY NEIGHBORHOOD

ASSOCIATION, INC.,

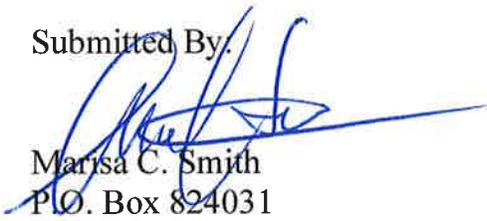
Respondent,

On Petition for Writ of Certiorari from the Eleventh Circuit Court of Appeals

No. 24-12183-JJ

**MOTION APPLICATION FOR EXTENSION OF TIME AND PROTECTIVE
PETITION FOR WRIT OF CERTIORARI**

Submitted By:



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Pro Se Appellant

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SUPREME COURT, U.S.

**MOTION APPLICATION FOR EXTENSION OF TIME AND PROTECTIVE
PETITION FOR WRIT OF CERTIORARI**

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit:

Petitioner Marisa C. Smith, proceeding pro se, respectfully applies for an extension of time of sixty (60) days, to and including March 17, 2026, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this matter. This is the first extension requested in this case.

Procedural Posture and Statement of Relevant Dates

The United States Court of Appeals for the Eleventh Circuit entered its judgment in this case on December 17, 2025. Petition for rehearing was filed. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Pursuant to Supreme Court Rule 13.1, the petition for a writ of certiorari is due within ninety (90) days of the entry of judgment. The 90th day is March 17, 2026. Absent an extension, the petition must be filed on or before that date. This application is timely filed before the expiration of the original deadline.

Good-Cause Statement (Reasons Supporting Extension)

Good cause exists to grant this extension. Petitioner is proceeding pro se and requires additional time to prepare a petition that adequately presents the complex and important questions of federal law at issue in this case.

The central issue concerns the procedural requirements for a junior lienholder to foreclose on a debtor's property during an active Chapter 13 bankruptcy proceeding. Specifically, the case addresses whether a junior lienholder, after obtaining relief from the automatic stay under 11 U.S.C. § 362, may proceed with foreclosure without first initiating an adversary proceeding to adjudicate the validity, priority, and extent of competing liens as required by Federal Rule of Bankruptcy Procedure 7001(2) (which defines as an adversary proceeding any "proceeding to determine the validity, priority, or extent of a lien or other interest in property") and recognized as a core proceeding concerning "determinations of the validity, extent, or priority of liens" under 28 U.S.C. § 157(b)(2)(K).

Properly addressing this question requires substantial research into a body of case law where courts have reached different conclusions. For example, some courts strictly require an adversary proceeding for actions that would alter lien rights or determine lien priority, treating Rule 7001(2) as mandatory and grounded in due process, and characterizing such disputes as core proceedings under 28 U.S.C. § 157(b)(2)(K). See, e.g., *In re Mansaray-Ruffin*, 530 F.3d 230, 237–42 (3d Cir. 2008) (holding that lien

invalidation may occur only through an adversary proceeding under Rule 7001(2) and that the rule embodies due process protections); *In re Whitehall Jewelers Holdings, Inc.*, 2008 WL 2951974, at *6–9 (Bankr. D. Del. July 28, 2008) (strictly enforcing Rule 7001(2) and requiring adversary proceedings before extinguishing asserted interests in consigned goods). Other courts have treated the failure to initiate an adversary proceeding as a non-jurisdictional procedural error that does not necessarily void the resulting order, relying on this Court’s decision in *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010). See *Wells Fargo Bank, N.A. v. AMH Roman Two NC, LLC*, 859 F.3d 295, 303–04 (4th Cir. 2017) (holding that obtaining lien-related relief by motion rather than adversary does not render the order void under Rule 60(b)(4)).

Furthermore, the case involves the interplay between the automatic stay, the definition of property of the estate under 11 U.S.C. § 541, and state foreclosure laws, particularly in the context of homeowners’ association super priority liens that can extinguish senior mortgage interests. The Bankruptcy Code broadly defines “property of the estate” to include “all legal or equitable interests of the debtor in property as of the commencement of the case,” as well as proceeds and other attributes of such property. 11 U.S.C. § 541(a)(1), (a)(6). The automatic stay, in turn, prohibits “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate,” and “any act to create, perfect, or enforce any lien

against property of the estate.” 11 U.S.C. § 362(a)(3), (4). Courts have recognized that, under certain state-law “superpriority” regimes for homeowners’ association liens, foreclosure can extinguish a previously senior deed of trust, creating particularly acute consequences in the bankruptcy context. See, e.g., *In re Leeds*, 589 B.R. 186, 194–95 (Bankr. D. Nev. 2018) (explaining that under Nevada law a valid HOA foreclosure sale can extinguish a lower-priority residential mortgage and describing the “extreme” consequences when this occurs while the property is in a bankruptcy estate); *Invest Vegas, LLC v. 21st Mortgage Corp. (In re Residential Capital, LLC)*, 556 B.R. 555, 558–61 (Bankr. S.D.N.Y. 2016) (addressing whether an HOA foreclosure sale that extinguished a first-priority deed of trust during the pendency of a chapter 11 case violated the automatic stay).

As a pro se litigant, Petitioner faces significant challenges in navigating these intricate areas of bankruptcy procedure and constitutional due process without legal assistance. Preparing a petition that coherently articulates the conflicts among lower courts and the national importance of these issues, and that accurately situates this case within the framework of Rules 7001 and 3012, 11 U.S.C. §§ 362 and 541, and the HOA foreclosure jurisprudence, requires careful review of a multi-level record from the bankruptcy court, district court, and court of appeals, as well as a thorough analysis of the relevant statutes and case law. Petitioner has been working diligently but

requires the requested sixty (60) days to finalize her research and draft a complete and properly formatted petition for writ of certiorari.

Legal Authorities Supporting Extension Request

This Application is submitted pursuant to Rule 13.5 of the Rules of the Supreme Court of the United States, which provides that a Justice of this Court, for good cause shown, may extend the time to file a petition for a writ of certiorari for a period not exceeding 60 days. The authority to grant such an extension rests within the sound discretion of the Circuit Justice.

The “good cause” standard is a flexible one. Factors such as the complexity of the issues presented, the necessity of reviewing a voluminous record, and the pro se status of a litigant may constitute good cause for an extension. Where, as here, the case involves intricate questions of federal bankruptcy procedure, the application of multiple statutory provisions, and potential conflicts among the lower courts (see, e.g., 28 U.S.C. § 157(b)(2)(K) (classifying “determinations of the validity, extent, or priority of liens” as core proceedings); Federal Rule of Bankruptcy Procedure 7001(2) (requiring an adversary proceeding “to determine the validity, priority, or extent of a lien or other interest in property”); *In re Mansaray-Ruffin*, 530 F.3d 230, 237–42 (3d Cir. 2008) (holding that a debtor could not invalidate a mortgage lien through plan language alone and that Rule 7001(2)’s adversary-proceeding requirement embodies due process protections); *Wells Fargo Bank, N.A. v. AMH Roman Two NC, LLC*, 859 F.3d 295, 303–04 (4th Cir. 2017) (relying

on *Espinosa* to treat the failure to proceed by adversary under Rule 7001(2) as a non-jurisdictional procedural defect rather than rendering the lien-related order void)), an extension of time allows for the preparation of a petition that can most effectively assist the Court in its consideration of the issues.

Petitioner submits that the reasons articulated in the foregoing Good-Cause Statement satisfy this standard.

Protective Petition Statement

To preserve my rights pending the disposition of this Application, Petitioner contemporaneously submits a protective petition for a writ of certiorari. This protective filing is necessitated by the imminent expiration of the jurisdictional deadline to seek this Court's review.

The underlying case involves a Chapter 13 bankruptcy proceeding during which Respondent, a junior lienholding homeowners' association, obtained relief from the automatic stay by motion (see 11 U.S.C. § 362(d)).

Respondent then proceeded to foreclose on Petitioner's property, which was property of the bankruptcy estate under 11 U.S.C. § 541 and thus part of the "property of the estate" protected by the automatic stay. This foreclosure occurred without the initiation of an adversary proceeding to determine the validity, priority, or extent of competing liens (as contemplated by Federal Rule of Bankruptcy Procedure 7001(2)), including a senior mortgage that remained on the property. The foreclosure resulted in the extinguishment of Petitioner's title while leaving her liable for the senior mortgage debt,

demonstrating the significant and potentially inequitable consequences of the procedure permitted by the lower courts (cf. *In re Leeds*, 589 B.R. 186, 194–95 (Bankr. D. Nev. 2018) (describing the “extreme” consequences when an HOA foreclosure during a bankruptcy case extinguishes a residential mortgage while the debtor’s personal liability is discharged); *Invest Vegas, LLC v. 21st Mortgage Corp. (In re Residential Capital, LLC)*, 556 B.R. 555, 558–61 (Bankr. S.D.N.Y. 2016) (addressing an HOA superpriority lien foreclosure that extinguished a deed of trust and analyzing whether the sale violated the automatic stay).)

Brief Summary of Questions Presented (for Protective Petition)

Petitioner intends to present the following questions for review:

1. Whether Federal Rule of Bankruptcy Procedure 7001(2), which requires an adversary proceeding “to determine the validity, priority, or extent of a lien or other interest in property,” together with 28 U.S.C. § 157(b)(2)(K) (classifying “determinations of the validity, extent, or priority of liens” as core proceedings), is a mandatory prerequisite that a junior lienholder must satisfy before foreclosing on property of the estate during a Chapter 13 case, even after obtaining relief from the automatic stay by motion.
2. Whether a bankruptcy court order granting a junior lienholder relief from the automatic stay under 11 U.S.C. § 362(d), with respect to property that is part of the bankruptcy estate as defined in 11 U.S.C. § 541, by

motion—without an accompanying adjudication of lien priority—
authorizes a foreclosure that alters the rights of senior lienholders and
extinguishes the debtor’s title and equity of redemption in property of
the estate, or if such actions exceed the scope of the stay relief and
remain subject to the procedural requirements of Federal Rule of
Bankruptcy Procedure 7001(2).

3. Whether allowing a foreclosure sale to proceed based solely on an
order lifting the automatic stay, without the procedural safeguards of an
adversary proceeding to resolve disputed lien priorities, violates the due
process rights of the debtor and other interested parties—consistent
with the principles recognized in *SLW Capital, LLC v. Mansaray-Ruffin*
(*In re Mansaray-Ruffin*), 530 F.3d 230, 237–42 (3d Cir. 2008), which
held that the adversary-proceeding requirement of Rule 7001(2)
embodies heightened procedural protections before lien rights may be
altered—by extinguishing significant property rights without a full and
fair opportunity to be heard on the merits of the competing claims.

Statement of Prior Attempts to Obtain Relief/Contact With Opposing Counsel

This is Petitioner’s first request for an extension of time in this matter. A copy
of this application is being served on counsel for Respondent, Shoma Homes
at Nautica Single Family Neighborhood Association, Inc. Due to Petitioner’s

pro se status, she has not conferred with counsel for Respondent regarding their position on this application.

Conclusion and Prayer for Relief

For the foregoing reasons, Petitioner respectfully requests that this application be granted and that the time for filing a petition for a writ of certiorari be extended for sixty (60) days, to and including May 17, 2026.

Respectfully submitted,

/s/ Marisa Chanile Smith

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Pro Se Petitioner

7. CONCLUSION

This application is not filed for purpose of delay. The undersigned's current case justifies this request. Petitioner respectfully requests that an extension of time to file a petition for a writ of certiorari be granted to and including May 16, 2026.

Respectfully submitted,

Marisa Smith

Pro Se Petitioner

This 16 day of March, 2026.



Respectfully submitted,

/s/ Marisa C Smith

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Pro Se Appellant

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-12183
Non-Argument Calendar

In re: MARISA CHANILE SMITH,

Debtor.

MARISA CHANILE SMITH,

Plaintiff-Appellant,

versus

SHOMA HOMES AT NAUTICA SINGLE FAMILY,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:22-cv-61931-DSL

Before BRANCH, GRANT, and ANDERSON, Circuit Judges.

PER CURIAM:

Marisa Chanile Smith, proceeding pro se, appeals the district court's order affirming the bankruptcy court's annulment of the automatic stay and denial of Smith's motion for reconsideration. Smith argues that the bankruptcy court clearly erred by finding that she filed her Chapter 13 bankruptcy petition in bad faith and abused its discretion by granting the motion of creditor Shoma Homes at Nautica Single Family for relief from the automatic stay based on that finding. She also argues that the bankruptcy court abused its discretion by denying her motion to reconsider its annulment order without addressing her new arguments and evidence and without engaging in a reasoned analysis. We affirm.

I.

In a bankruptcy case, we sit as a second court of review and independently examine the bankruptcy court's decisions. *Law Sols. of Chicago LLC v. Corbett*, 971 F.3d 1299, 1304 (11th Cir. 2020). We review the bankruptcy court's legal conclusions de novo and its factual findings—including a finding that a bankruptcy petition was filed in bad faith—for clear error. *Id.*; *In re Brown*, 742 F.3d 1309, 1315 (11th Cir. 2014). "Findings of fact are not clearly erroneous unless, in light of all the evidence, we are left with the definite and firm conviction that a mistake has been made." *In re Custom Contractors, LLC*, 745 F.3d 1342, 1346 (11th Cir. 2014) (quotation omitted).

We review a bankruptcy court's annulment of the automatic stay under 11 U.S.C. § 362 for abuse of discretion. *In re Patel*, 142 F.4th 1313, 1319 (11th Cir. 2025). We also review the denial of

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a motion for reconsideration or relief from judgment for abuse of discretion. *Holland v. Sec’y, Florida Dep’t of Corr.*, 941 F.3d 1285, 1288 (11th Cir. 2019); see *In re Kellogg*, 197 F.3d 1116, 1119 (11th Cir. 1999). “A bankruptcy court abuses its discretion when it misapplies the law or bases its decision on clearly erroneous findings of fact.” *In re Ellingsworth Residential Cmty. Ass’n, Inc.*, 125 F.4th 1365, 1381 (11th Cir. 2025).

II.

A.

Smith first argues that the bankruptcy court abused its discretion by annulling the automatic stay triggered by the filing of her bankruptcy petition, based on its finding that her bankruptcy petition was not filed in good faith. See 11 U.S.C. § 362. Ordinarily, post-filing proceedings against the debtor or her property violate the automatic stay and are “void and without effect.” *In re Patel*, 142 F.4th at 1320 (quotation omitted). But § 362(d) authorizes bankruptcy courts to annul the automatic stay “for cause,” thus granting relief from the stay that is retroactive to the date of filing of the petition. *Id.*; 11 U.S.C. § 362(d)(1).

A finding that a bankruptcy petition was filed in bad faith is sufficient cause for relief from an automatic stay. *In re Dixie Broad., Inc.*, 871 F.2d 1023, 1026 (11th Cir. 1989); *In re Phoenix Piccadilly, Ltd.*, 849 F.2d 1393, 1394 (11th Cir. 1988). In determining whether a petition was filed in bad faith, bankruptcy courts “may consider any factors which evidence an intent to abuse the judicial process and the purposes of the reorganization provisions.” *In re Phoenix*

Piccadilly, 849 F.2d at 1394. Those factors include “the motivations of the debtor and his sincerity in seeking relief under the provisions of Chapter 13”; “the timing of the filing of the petition” and other relevant actions; “the frequency with which the debtor has sought relief under the Bankruptcy Reform Act and its predecessors”; “the circumstances under which the debtor has contracted his debts and his demonstrated bona fides, or lack of same, in dealings with his creditors”; and “whether the petition was filed strictly to circumvent pending litigation.” *In re Brown*, 742 F.3d at 1316–17; *In re Nat. Land Corp.*, 825 F.2d 296, 298 (11th Cir. 1987); *In re Dixie Broad.*, 871 F.2d at 1027. Facts indicating that a petition was filed “to delay or frustrate the legitimate efforts of secured creditors to enforce their rights” support a finding of bad faith. *In re Phoenix Piccadilly*, 849 F.2d at 1394 (quotation omitted).

Here, the bankruptcy court’s finding that Smith filed her Chapter 13 bankruptcy petition in bad faith was adequately supported by the record. The petition was Smith’s third in four years, and the two previous petitions were dismissed without confirmation of a plan for reorganization and repayment of her debts. She admitted that she filed the third bankruptcy petition solely as a last-ditch attempt to block the foreclosure sale of her home, which was the result of a foreclosure action by Shoma seeking to collect on a debt for several years of unpaid homeowner association fees. She testified that she had no intention of filing for bankruptcy—even after the state court entered a final judgment of foreclosure and Shoma posted a notice of sale in the local paper—until her other last-minute efforts to persuade Shoma and the state court to delay

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the sale failed. She filed her bankruptcy petition hours after her home was sold at auction to a third party, and because she did not immediately notify the state court that she had filed a bankruptcy petition, the state court clerk filed a certificate of sale later that afternoon in violation of the automatic stay.

Smith's lack of compliance with pre- and post-filing requirements and deadlines during the short pendency of her bankruptcy proceeding also supported a finding that the petition was not filed in good faith. She did not complete the pre-filing budget and credit counseling required by statute to qualify her as a debtor, so that dismissal of the petition was inevitable. *See* 11 U.S.C. § 109(h). She failed to file a Chapter 13 plan, schedules of assets and liabilities, and other required documents with her petition, and she missed the deadline set by the bankruptcy court to correct those deficiencies. *See* 11 U.S.C. § 521. When she finally did file a plan, she proposed stripping Shoma of its lien on her home despite her equity in the property exceeding the amount of the debt, and she proposed paying Shoma only enough to cover her ongoing monthly fees without repaying the debt that would have been satisfied by the foreclosure sale—meaning that the plan likely was not confirmable. She failed to appear for the initial meeting of creditors, and she failed to make timely preconfirmation payments under the plan until after the trustee moved to dismiss her petition.

Under the circumstances, the bankruptcy court's finding that the petition was filed in bad faith was not clearly erroneous. And because the petition was filed in bad faith, the bankruptcy

court's decision to annul the automatic stay was not an abuse of discretion. *In re Dixie Broad.*, 871 F.2d at 1026; *In re Phoenix Piccadilly*, 849 F.2d at 1394.

B.

Next, Smith argues that the bankruptcy court abused its discretion by denying her motion for reconsideration of the order granting relief from the automatic stay. A bankruptcy court may grant relief from a judgment under Rule 59(e) or Rule 60(b) of the Federal Rules of Civil Procedure on specified grounds that include (as relevant here) a manifest error of fact or law, mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, or—in extraordinary circumstances—“any other reason that justifies relief.” Fed. R. Civ. P. 59(e), 60(b)(1)–(2), 60(b)(6); *see* Fed. R. Bankr. P. 9023 (incorporating Fed. R. Civ. P. 59(e)), 9024 (incorporating Fed. R. Civ. P. 60); *In re Daughtrey*, 896 F.3d 1255, 1280 (11th Cir. 2018); *Toole v. Baxter Healthcare Corp.*, 235 F.3d 1307, 1316 (11th Cir. 2000). But a motion filed under Rule 59(e) or Rule 60(b) cannot be used “to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment.” *Michael Linet, Inc. v. Vill. of Wellington*, 408 F.3d 757, 763 (11th Cir. 2005); *Terrell v. Sec’y, Dep’t of Veterans Affs.*, 98 F.4th 1343, 1357 (11th Cir. 2024) (quotation omitted).

The bankruptcy court considered Smith’s motion and determined that she had not articulated any grounds for granting the motion under Rule 59(e) or Rule 60. This was not an abuse of discretion. For the most part, Smith reiterated the arguments she

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made in response to Shoma's motion for relief from the automatic stay: that the bankruptcy filing was a good-faith attempt to block the foreclosure sale, which was flawed and unfair because of attorney negligence and lack of notice, and that she had substantial equity in the home that would be lost if the sale were completed. She did not present any evidence or argument that could not have been raised before judgment, and she did not show that the bankruptcy court's order was based on a factual or legal error or excusable neglect or that extraordinary circumstances existed warranting relief. The bankruptcy court's explanation of its ruling, though brief, indicated that it had considered Smith's arguments and applied the correct legal standard. Because the explanation was sufficient to allow for meaningful appellate review, the bankruptcy court did not abuse its discretion by not explicitly addressing every relevant circumstance or argument raised by Smith. *In re Ellingsworth Residential Cmty. Ass'n*, 125 F.4th at 1381–82.

III.

The bankruptcy court did not clearly err in determining that Smith's Chapter 13 bankruptcy petition was filed in bad faith, and did not abuse its discretion in granting Shoma's motion for relief from the automatic stay or in denying Smith's post-judgment motion for reconsideration. We therefore affirm the bankruptcy court's orders annulling the automatic stay and denying the motion for reconsideration.

AFFIRMED.

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-12183

In re: MARISA CHANILE SMITH,

Debtor.

MARISA CHANILE SMITH,

Plaintiff-Appellant,

versus

SHOMA HOMES AT NAUTICA SINGLE FAMILY,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:22-cv-61931-DSL

ON PETITION FOR REHEARING AND PETITION FOR
REHEARING EN BANC

Before BRANCH, GRANT, and ANDERSON, Circuit Judges.

PER CURIAM:

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Order of the Court

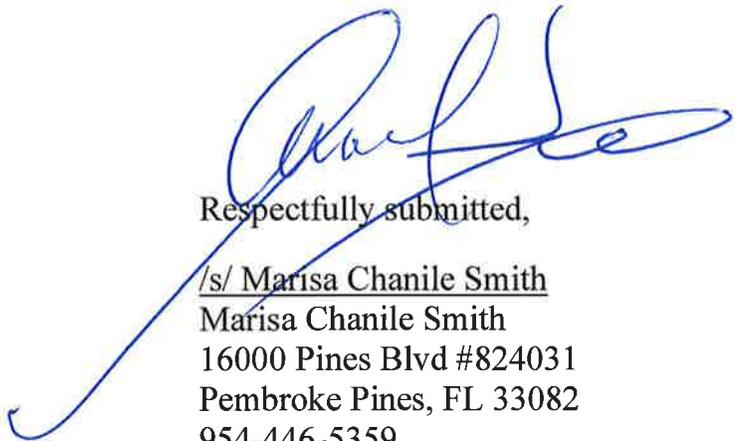
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The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 40. The Petition for Panel Rehearing also is DENIED. FRAP 40.

CERTIFICATE OF SERVICE

I, Marisa C. Smith, hereby certify that on this March 16, 2026, I served a true and correct copy of the foregoing Application for Extension of Time to File Petition for Writ of Certiorari by first-class mail, postage prepaid, on counsel for Respondent at the following address:

This 02 day of August, 2024.



Respectfully submitted,

/s/ Marisa Chanile Smith

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