Date: 20080409

Docket: T-1594-06

Citation: 2008 FC 458

Ottawa, Ontario, the 9th day of April 2008

Present: The Honourable Mr. Justice Martineau

IN THE MATTER OF the *Income Tax Act*

AND IN THE MATTER OF assessments by the Minister of National Revenue under the *Income Tax Act*

AGAINST:

MARIO LAQUERRE
FIDUCIE MARIO LAQUERRE
FIDUCIE ML
9075-3153 QUÉBEC INC.
9015-7769 QUÉBEC INC.
9067-6388 QUÉBEC INC.
1392, 4e avenue
Québec (Quebec) G1J 3B6

-and-

9029-0065 QUÉBEC INC.
825, chemin Hibou
Stoneham (Québec) G0A 4P0

Respondents

REASONS FOR ORDER AND ORDER

[1] The general rule, pursuant to subsection 225.1(1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act), is that the Minister of National Revenue (the Minister) is restricted from collecting amounts owing by a taxpayer to Her Majesty in Right of Canada (Her Majesty or the applicant) until 90 days after the day on which the notice of assessment is mailed. Nevertheless, where a judge is satisfied that there are reasonable grounds to believe that the collection of all or any part of the amount assessed in respect of the taxpayer would be jeopardized by a delay in the collection of that amount, the judge shall authorize the Minister to proceed forthwith.

[2] Subsection 225.2(2) of the Act provides as follows:

(2) Notwithstanding section 225.1, where, on *ex parte* application by the Minister, a judge is satisfied that there are reasonable grounds to believe that the collection of all or any part of an amount assessed in respect of a taxpayer would be jeopardized by a delay in the collection of that amount, the judge shall, on such terms as the judge considers reasonable in the circumstances, authorize the Minister to take forthwith any of the actions described in paragraphs 225.1(1)(*a*) to 225.1(1)(*g*) with respect to the amount.	(2) malgré l'article 225.1, sur requête *ex parte* du ministre, le juge saisi autorise le ministre à prendre immédiatement des mesures visées aux alinéas 225.1(1)*a*) à *g*) à l'égard du montant d'une cotisation établie relativement à un contribuable, aux conditions qu'il estime raisonnables dans les circonstances, s'il est convaincu qu'il existe des motifs raisonnables de croire que l'octroi à ce contribuable d'un délai pour payer le montant compromettrait le recouvrement de tout ou partie de ce montant.

[3] The respondents, Mario Laquerre (Laquerre), Fiducie Mario Laquerre (Fiducie Laquerre), Fiducie ML (ML), 9075-3153 Québec Inc. (9075), 9015-7769 Québec Inc. (9015), 9067-6388 Québec Inc. (9067) and 9029-0065 Québec Inc. (9029), are seeking to have the Court set aside the *ex parte* order issued September 6, 2006, authorizing the Minister to take forthwith any or all of the

collection measures described in paragraphs (*a*) to (*g*) of subsection 225.1(1) of the Act, to collect and/or secure the payment of the reassessments made by the Minister on August 31, 2006, against the respondents (the impugned order).

[4] On April 26, 2007, a second jeopardy collection order issued against Laquerre, Fiducie Laquerre and ML, as well as other entities or companies (most of which are not respondents herein), was also issued *ex parte* by the Court in docket T-699-07 to collect and/or secure the payment of the assessments made by the Minister on April 25, 2007. The validity of this second jeopardy collection order is considered in a concurrent decision.

[5] On the return of the *ex parte* motion in this docket on September 6, 2006, the Court relied on three affidavits in issuing the impugned order: the affidavit of Annie Valois, sworn August 31, 2006; the affidavit of André Ferland, sworn August 31, 2006; and the affidavit of Jeannot Roy, sworn August 29, 2006. In docket T-699-07, in issuing the second jeopardy collection order, the Court relied on the affidavits of André Ferland and Annie Morin, both sworn April 25, 2007.

[6] The Court is satisfied that there are reasonable grounds to believe that granting a delay to the respondents to pay the total amounts in the assessments issued August 31, 2006, would jeopardize the collection of all or any part of those amounts. I accept the following from the voluminous evidence submitted by the applicant.

[7] Laquerre is a resident of Quebec City. He has been involved in real estate investment for several years, acquiring (in his own name and through the trusts and numbered companies he controls) foreclosures and other distress properties. In another *ex parte* order issued October 11, 2007, the Court agreed to lift the corporate veil in respect of some of those entities. This issue is dealt with in a concurrent decision (2008 FC 460) on a motion by the judgment creditor, in this case Her Majesty, to issue a charging order absolute on the various immovables belonging to 9067 and/or 9011-1345 Québec Inc. (9011).

[8] In May 2003, Annie Valois, a Canada Revenue Agency (Agency) auditor, informed Laquerre that she wanted to conduct an audit for tax years 1998 to 2002, inclusive, of his business and that of Fiducie Laquerre, ML, 9075, 9015, 9067 and 9029.

[9] Starting in August 2003, she conducted the audit on site. She noted the following:

> [TRANSLATION]
>
> Laquerre has been providing incomplete information to his representatives, to such an extent that several real estate transactions have not been reported at all, or the reported gain does not represent the true gain, which means that Laquerre or the trusts of which he is one of the two trustees and one of the beneficiaries or his non-arm's length companies voluntarily evaded the payment of income tax owed to [the Agency…].

[10] Ms. Valois determined that Laquerre and the non-arm's length companies or the trusts of which he was one of the beneficiaries were employing a number of tax evasion schemes. On February 27, 2004, Ms. Valois met with Laquerre and his chartered accountant, Laurier Edmond. The latter stated that Laquerre [TRANSLATION] "really doesn't like paying income tax".

[11] Ms. Valois described four schemes in her affidavit dated August 31, 2006. One of them is explained as follows under the heading [TRANSLATION] “B. THE SCHEME OF ADVANCING FUNDS TO A COMPANY ABOUT TO BE DISSOLVED”:

> i. During my audit, I discovered that Laquerre had also developed a scheme for diverting proceeds from the sale of immovables to one of his trusts or companies without any tax implications;
>
> ii. Through one of his trusts or non-arm’s length companies, Laquerre would charge the immovables belonging to his trusts or companies with several hypothecs, indicating in the hypothecary instruments that these were amounts granted through cash advances;
>
> iii. However, the cash advances were in fact much lower than the amounts of the registered hypothecs;
>
> iv. This means that when the company or trust sold the immovable to a third party, the notary—often selected by the buyer—had to ensure that all the debts associated with the immovable were paid before making any payments to the vendor;
>
> v. The notary would therefore discharge the hypothecs in the name of the entities belonging to Laquerre without having to verify whether the amounts had actually been advanced;
>
> vi. At that point, the notary would write a cheque to the holder of the hypothec to obtain an acquittance for the debt. Usually, the redemption of the hypothec generates a credit balance with regard to the advances. Normally, in such a transaction, no benefit is calculated because the entity receiving the money records an account payable to the entity to which the advances are owed.
>
> vii. In fact, however, his entities would wind up their companies, cease operations, make no credit entry offset, stop filing income tax returns and be struck off by the Inspector General of Financial Institutions, so that the advance owed by the

company or trust that had sold the immovable was never reimbursed;

viii. I consider the resulting benefits undeclared income amounting to approximately $1,888,952.67 for the various entities concerned, as can be seen in Reference 2 of Appendix 2 of the audit report filed as Exhibit “65” in support of my affidavit;

[12] On November 1, 2004, Ms. Valois transferred Laquerre’s file to the Agency’s Special Investigations section, which commenced an investigation. Apparently, the investigation is ongoing. To date, no charges have been laid against the respondents.

[13] According to Mr. Ferland’s affidavit of August 31, 2006,

- Laquerre owes the Agency $313,300.05 based on four notices of reassessment dated August 31, 2006, for the taxation years 1999 to 2002, inclusive;
- Fiducie Laquerre owes the Agency $132,728.09 based on an initial assessment dated August 31, 2006, for the 2001 taxation year and a notice of reassessment dated August 31, 2006, for the 2002 taxation year;
- ML owes the Agency $689,308.16 based on five notices of reassessment dated August 31, 2006, for the taxation years 1998 to 2002, inclusive;
- 9075 owes the Agency $233,785.89 based on three notices of reassessment dated August 31, 2006, for the taxation years 1999 to 2001, inclusive, and an assessment dated February 13, 2003, for the 1999 taxation year;
- 9015 owes the Agency $128,265.32 based on three notices of reassessment dated August 31, 2006, for the taxation years 2000 to 2002, inclusive;

- 9029 owes the Agency $183,641.27 based on a reassessment dated August 31, 2006, for the 2000 taxation year and an assessment dated April 25, 2002, for the 2000 taxation year; and,
- 9067 owes the Agency $35,653.67 based on a notice of assessment dated June 7, 2006, for the 2005 taxation year.

[14] Mr. Ferland also indicated in his affidavit of August 31, 2006, that he had reason to believe, *inter alia*, that,

- Laquerre had attempted to "liquidate" the cash held by his non-arm's length companies or redistribute it to other companies or trusts in order to shield it from his creditors;
- Laquerre's various companies and trusts had few liquid assets;
- the respondents sold seven immovables and put two others up for sale;
- Laquerre managed the assets of his non-arm's length companies and trusts in such a way as to shield assets from his creditors; and,
- the schemes developed by Laquerre and his non-arm's length companies and trusts for the purpose of shielding assets from their creditors indicate that the collection of the debt owed to Her Majesty would be jeopardized by a delay granted to the respondents to pay the amounts in the assessments issued to them.

[15] Mr. Roy's affidavit, dated August 29, 2006, simply states that searches were planned for September 7, 2006, at Laquerre's home and at the places of business of Laquerre's non-arm's length companies and trusts.

[16] In the impugned order issued on September 6, 2006, the Court authorized, *inter alia*,

a) the applicant to apply paragraphs 225.1(1)(*a*) to (*g*) of the Act against the respondents for the assessments issued August 31, 2006;

b) the applicant and the serving bailiff to serve the impugned order on the respondents;

c) the serving bailiff to appoint a guardian (other than Laquerre) for the property seized;

d) the serving bailiff to remove the property seized;

e) the bailiff charged with the writs of seizure and sale to open the doors to any location and to open any safe-deposit box and safe; and,

f) the serving bailiff to have the door opened of any closed or locked safe on the premises related to Laquerre and his companies and trusts.

[17] In fact, on September 7, 2006, after the impugned order had been issued, the Agency carried out seizures in the various places of business of the respondents and the residences of persons related to Laquerre. Following the seizures, the Agency registered legal hypothecs against immovables belonging to ML, Fiducie Laquerre and 9067. The Agency seized all of the respondents' bank accounts and movable property. The Agency also seized the balance of the proceeds of sale held by Fiducie Laquerre and ML. Moreover, the Agency seized investment funds and an insurance policy belonging to Laquerre issued by Industrial Alliance. Subsequently, the Agency released all the bank accounts belonging to the respondents to enable them to continue running their daily operations.

[18] On November 29, 2006, 9067 paid its tax debt to the Agency in full, namely, $35,653.67. In November of the same year, the Agency also released certain movables that did not belong to the respondents.

[19] After the impugned order was issued, the respondents confirmed their intention to challenge before the Tax Court of Canada the notices of reassessment issued August 31, 2006, and subsequently served upon them. The outcome of their objection or appeal has yet to be determined. That said, subsection 225.2(8) of the Act allows a taxpayer to apply to the Court by way of a motion to review the *ex parte* authorization obtained under subsection 225.2(2) of the Act. The principles applicable in this case are well established. See, for example, *Canada (Minister of National Revenue) v. Services M.L. Marengère Inc*., [2000] 1 C.T.C. 229, [1999] F.C.J. No. 1840 (QL) (*Marengère*) and *Canada v. Satellite Earth Station Technology Inc*., [1989] 2 C.T.C. 291, [1989] F.C.J. No. 912 (QL).

[20] Mr. Justice Lemieux explains the following at para. 63 of *Marengère*:

> (1) The perspective of the jeopardy collection provision goes to the matter of collection jeopardy by reason of delay normally attributable to the appeal process. The wording of the provision indicates that it is necessary to show that because of the passage of time involved in an appeal, the taxpayer would become less able to pay the amount assessed. In other words, the issue is not whether the collection per se is in jeopardy but rather whether the actual jeopardy arises from the likely delay in the collection.
>
> (2) In terms of burden, an applicant under subsection 225.2(8) has the initial burden to show that there are reasonable grounds to doubt that the test required by subsection 225.2(2) has been met, that is, the collection of all or any part of the amounts assessed would be jeopardized by the delay in the collection. However, the ultimate

> burden is on the Crown to justify the jeopardy collection order granted on an ex parte basis.
>
> (3) The evidence must show, on a balance of probability, that it is more likely than not that collection would be jeopardized by delay. The test is not whether the evidence shows beyond all reasonable doubt that the time allowed to the taxpayer would jeopardize the Minister's debt.
>
> (4) The Minister may certainly act not only in cases of fraud or situations amounting to fraud, but also in cases where the taxpayer may waste, liquidate or otherwise transfer his property to escape the tax authorities: in short, to meet any situation in which the taxpayer's assets may vanish in thin air because of the passage of time. However, the mere suspicion or concern that delay may jeopardize collection is not sufficient per se. As Rouleau J. put it in 1853-9049 Quebec Inc., supra, the question is whether the Minister had reasonable grounds for believing that the taxpayer would waste, liquidate or otherwise transfer its assets, so jeopardizing the Minister's debt. What the Minister has to show is whether the taxpayer's assets can be liquidated in the meantime or be seized by other creditors and so not available to him.
>
> (5) An ex parte collection order is an extraordinary remedy. Revenue Canada must exercise utmost good faith and insure full and frank disclosure. …

[21] The respondents submit that there are no reasonable grounds to believe that granting a delay to pay the amounts set out in the notices of reassessment would jeopardize the collection of all or any part of those amounts. They also claim that the Minister failed to fulfill his obligation to disclose to this Court all the relevant facts on the return of the *ex parte* motion. Thus, the affidavits submitted by the applicant in support of the *ex parte* motion included allegations that were insufficient, inaccurate or out of context. Furthermore, Laquerre suffered personally as a result of the seizures carried out by the Agency.

[22] At the hearing before this Court, counsel for the respondents dwelt at length on a number of errors and omissions revealed by Mr. Ferland's examination on affidavit in particular. Accordingly, he invited the Court to reject all of Mr. Ferland's allegations on the basis that he was not credible and that he had failed to disclose material facts to the Court. The respondents also challenge the conclusions reached by Ms. Morin and Ms. Valois in their respective affidavits to the effect that the respondents attempted to evade their income tax payments. The respondents have much to explain with respect to the transactions at issue and their failure to report various amounts to the tax authorities for the taxation years in question.

[23] In this case, the respondents allege that the applicant failed to inform the Court that Laquerre had been making real estate investments for many years in his own name and through his trusts and companies. These activities constitute his livelihood and are perfectly legitimate. They do not represent the dissipation of immovable assets by a taxpayer, but rather the normal activities of buying and selling immovable property.

[24] The respondents also claim that Mr. Ferland took no steps to obtain information about the deposits and withdrawals made on the accounts of the entities being audited and investigated. Moreover, Mr. Ferland possessed relevant information [TRANSLATION] "that could have provided explanations to the Court" on the deposits in question.

[25] The respondents further submit that during his examination on affidavit in docket T-1594-06, Mr. Ferland was unable to identify from which creditors the liquid assets of the companies and trusts in question would be shielded.

[26] Additionally, according to the respondents, Mr. Ferland made no attempt to trace the source of the cash allegedly found in the safe belonging to Laquerre that was stolen in 2003, which apparently contained CAN$65,000 and between US$12,000 and US$15,999, a large number of precious jewels, three passports, a will, credit cards and other pieces of identification.

[27] The respondents, employing various detailed examples in their written submissions, also argued that Mr. Ferland's affidavit of August 31, 2006, was incomplete. For instance, they had reasonable explanations for the amounts deposited in the account of 9067, the transactions related to the seven immovables, the putting up for sale of immovables and the statements of the Director General of the Caisse populaire Desjardins.

[28] The respondents argue that Ms. Valois's affidavit of August 31, 2006, is erroneous: Laquerre did not engage in any illegal scheme to evade income tax, either on his own behalf or for his companies or trusts. In this case, the respondents affirm that Laquerre had never told Mr. Edmond that he did not want to pay income tax. The transfers effected among Laquerre's non-arm's length companies and trusts had been reported to the tax authorities and were all published in the land registers. Furthermore, the fact that the entities that had benefited from cash advances were struck off *ex officio* by the Quebec Enterprise Registrar did not extinguish their legal existence. All the bank deposits made during the years covered by the audit were identifiable. Finally, Ms. Valois's affidavit refers to the fact that the respondents [TRANSLATION] "could easily publish hypothecs against the immovables belonging to them", without any evidence that there are

reasonable grounds to believe that such acts would be carried out if a delay were granted to the respondents to pay the amounts set out in the assessments issued August 31, 2006.

[29] Firstly, I find that the applicant satisfied his obligation of sufficient disclosure. Secondly, I am of the opinion that the conditions for issuing a jeopardy collection order are satisfied in this case. We need only refer to the affidavits filed in support of the *ex parte* motion and the written submissions of the applicant. I shall simply note the following.

[30] The respondents' criticisms, including those specifically raised in their written arguments, focus primarily on the hypothetical, insufficient or decontextualized nature of certain allegations made by Mr. Ferland and Ms. Valois (and Ms. Morin in docket T-699-07) in their respective affidavits. However, I do not find that these criticisms, even when taken together, allow this Court to conclude that the applicant failed to satisfy his obligation of full and frank disclosure. Full and frank disclosure does not require the disclosure of material that is simply irrelevant to the test for issuance of a jeopardy collection order (*Canada (Minister of National Revenue - M.N.R.) v. Rouleau*, [1995] F.C.J. No. 1209 (QL)).

[31] In so deciding, I took into account the fact that the remedy provided by subsection 225.2(2) of the Act is an exceptional measure and that the standard of disclosure to which the Minister is subject during the *ex parte* hearing is high. Thus, a motion to strike an order must be granted where it is apparent that the Minister's failure to make full and frank disclosure of the facts has misled the judge. That is not the case here.

[32] I am of the opinion that the respondents have failed to discharge their initial burden of showing that there are reasonable grounds to doubt that the general test required by subsection 225.2(2) of the Act has been met having regard to the particular facts of the case. In any event, having had the opportunity to review all the evidence in dockets T-1594-06 and T-699-07, including the evidence submitted by the respondents in this case, I find it more likely than not that granting a delay to the respondents would jeopardize the collection of the amounts owing to Her Majesty. The evidence as a whole in dockets T-1594-06 and T-699-07 establishes clearly and objectively that Laquerre is attempting to liquidate various immovable assets and redistribute the sale proceeds to other companies or trusts in order to shield those amounts from his creditors, if not from his principal creditor, Her Majesty (and likely also the tax authorities of the province of Quebec). Because of the highly precarious financial situation in which the respondents now find themselves, the collection of the debt owed to Her Majesty would be jeopardized if the respondents were granted a delay to pay the amounts set out in the assessments issued to them.

[33] In passing, the respondents emphasize that they do not have, nor have they ever had, any intention to dissipate their assets. However, as Mr. Justice Lemieux points out in *Marengère, supra*, at paragraphs 67 and 72 (subparagraph 4),

> [67] … This case does not turn on intent or on tax planning; it calls to be determined looking at the matter objectively and realistically on the ground so to speak. In other words, it is the effect or result of the taxpayer's action in dealing with its assets that is important and relevant in the assessment of the appropriateness of a collection jeopardy order. Tax liability is not an issue in such proceedings.
>
> [72] (4) … the Minister does not have to prove fraud or deceit or bad motive.

[34] Regardless of the respondents' real or presumed intentions, it is clear that in the facts, the actions taken by the respondents are obstructing the collection measures taken against 9075, 9015 and 9029, and that granting an additional delay to all of the respondents would jeopardize the collection of all or part of the income tax, interest and penalties that the applicant is claiming from the respondents under the reassessments.

[35] By way of example, the documentary evidence in the record shows that 9075, 9015 and 9029, three numbered companies controlled by Laquerre, reported very little income. They were then struck out *ex officio* on May 7, 2004. In this respect, the only assets belonging to 9075, 9015 and 9029 today are various amounts owed by ML or Fiducie Laquerre (of which Laquerre is one of the two beneficiaries). Despite the collection measures taken following the issuance of the two jeopardy collection orders on September 28, 2007, the full tax debt owed by Laquerre, 9122, 9075, 9015, 9029, ML, Fiducie Laquerre and MJ amounted to $2,809,313.22 (paragraph 23 of Mr. Ferland's affidavit dated November 20, 2007, filed in response to the respondents' motion to strike).

[36] Moreover, without disposing of the issue, I find that the evidence in the record establishes *prima facie* that the applicant also has reasonable grounds to maintain before this Court that the respondents are attempting to evade income tax. I need only refer to the affidavits of Mr. Ferland and Ms. Valois (and Ms. Morin in docket T-699-07), which for the most part are not seriously disputed by the respondents. Counsel for the respondents recognizes that Ms. Valois's credibility is not at issue. In her most recent detailed affidavit dated November 13, 2007, Ms. Valois reiterates the

truth of what she stated in her previous affidavit of August 31, 2006. Ms. Valois also challenges some of the less credible statements and explanations found in Laquerre's affidavit. For example, I accept that Laquerre did not give Ms. Valois his full cooperation during his audit, which resulted in several delays. I also accept that Laquerre seems to have employed various schemes to deceive the tax authorities. These are very well explained, with plenty of examples, at paragraphs 27 and following of Ms. Valois's affidavit dated November 13, 2007, filed by the applicant in response to the respondents' motion to strike.

[37] Having weighed all of the parties' written submissions, I also find Laquerre's explanations highly improbable and unsatisfactory in the circumstances. Furthermore, Laquerre's unorthodox behaviour in managing his affairs is a key factor that the Court may consider in this case (*Mann v. Canada (Minister of National Revenue)*, 2006 FC 1358, [2006] F.C.J. No. 1697 (QL) at para. 50, *Canada v. Paryniuk*, 2003 FC 1505, [2003] F.C.J. No. 1924 (QL) at para. 13, and *Laframboise v. The Queen*, [1986] 3 FC 521 at para.19). According to those cases, the business practices of Laquerre and his non-arm's length companies and trusts can be described as orthodox, making it easy for Laquerre to dissipate the assets of his companies and trusts. Furthermore, Laquerre did not deny the fact that he possessed a safe containing substantial amounts of cash, which he described as the proceeds of [TRANSLATION] "under-the-table" work (paragraph 90 of Mr. Ferland's affidavit of April 25, 2007, filed in support of the *ex parte* motion in docket T-699-07). According to Ms. Valois, who spoke with investigator Jean Poirier of the Quebec City police on March 18, 2004, the latter confirmed that the safe had been found three weeks later, but missing some of the money it contained, according to Laquerre. The investigator informed Ms. Valois that Laquerre had told him that the money in the safe was [TRANSLATION] "money earned under the table" (paragraph 96 of

Ms. Valois's affidavit dated November 13, 2007, filed in response to the respondents' motion to strike).

[38] For the reasons mentioned above, the Court dismisses the respondents' motion with costs. A concurrent decision dismissing the motion to strike the second jeopardy collection order has been issued in docket T-699-07 (2008 FC 459).

ORDER

THE COURT ORDERS that the respondents' motion to strike the jeopardy collection order issued September 6, 2006, is dismissed with costs.

"Luc Martineau"
Judge

Certified true translation

Francie Gow, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1594-06
STYLE OF CAUSE:	**IN THE MATTER OF the *Income Tax Act*** **AND IN THE MATTER OF assessments by the Minister of National Revenue under the *Income Tax Act*** **AGAINST:** **MARIO LAQUERRE, FIDUCIE MARIO LAQUERRE** **FIDUCIE ML, 9075-3153 QUÉBEC INC.** **9015-7769 QUÉBEC INC., 9067-6388 QUÉBEC INC.** 1392, 4e avenue, Québec (Québec) G1J 3B6 **9029-0065 QUÉBEC INC.** 825, chemin Hibou, Stoneham (Québec) G0A 4P0
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	February 20, 2008
REASONS FOR JUDGMENT AND JUDGMENT BY:	The Honourable Mr. Justice Martineau
DATED:	April 9, 2008

APPEARANCES:

Jacques Trudeau	FOR THE APPLICANT
Martin Lamoureux	FOR THE RESPONDENT

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