

UPPER TRIBUNAL (LANDS CHAMBER)



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LT Case Number: LRA/108/2008

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

*LEASEHOLD ENFRANCHISEMENT – flat – price – appeal against LVT’s determination of extended lease value, capitalisation rate and effect of right to enfranchise on value of existing lease – on review held that LVT wrongly failed to give proper consideration to two comparables – appeal allowed following rehearing – premium increased from £12,788 to £18,475.*

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE LEASEHOLD  
VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

BETWEEN SARUM PROPERTIES LIMITED Appellant

and

(1) COLIN STEWART WEBB  
(2) NATASHA LOUISE WEBB  
(3) KATRINA JOANNE WEBB Respondents

Re: 20c Mountview Road  
London N4 4HX

Before: N J Rose FRICS

Sitting at 43-45 Bedford Square, London, WC1B 3AS  
on 15 September 2009

Mr K Singleton of Trethowans, solicitors, of Salisbury, Wiltshire for Appellant  
*Genevieve Parke*, instructed by Barnes and Partners, solicitors, of Enfield, Middlesex for  
Respondents

The following cases are referred to in this decision:

*Arrowdell Ltd v Coniston Court (North) Hove Ltd* [2007] RVR 39

*Cadogan v Sportelli* [2007] 1 EGLR 153

*Cadogan v Sportelli* [2008] 1 WLR 2142

## **DECISION**

### **Introduction**

1. This is an appeal by Sarum Properties Limited, the freeholder (Sarum), against a decision of the Leasehold Valuation Tribunal for the London Rent Assessment Panel, determining the premium payable for a new lease of 20c, Mountview Road, London, N4 4HX under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) at £12,788.

2. The respondent tenants are Mr C S Webb, Miss N L Webb and Miss K J Webb, who hold a lease of the appeal property which, on 10 July 2007, the agreed valuation date, had 77.7 years unexpired.

3. At the LVT hearing the parties agreed that the value of the existing lease, with enfranchisement rights under the Act, was £355,000. The main issues were: the amount to be deducted from that figure to reflect the right to a new lease and the fact that a valid notice had been served under the Act; the value of the extended lease; and the capitalisation rate to be applied to the existing rent. It was agreed that the deferment rate was 5% and that the long leasehold value should be increased by 1% to arrive at the freehold value.

4. The LVT decided that the existing leasehold value without Act rights was £346,125 (representing a deduction of 2.5% from the agreed market value); the extended leasehold value was £361,386 and the capitalisation rate was 7%. HH Judge Huskinson gave permission to Sarum to appeal against the LVT's decision by way of review with a view, if the appeal was successful at the review stage, to a subsequent consequential hearing. The permission to appeal was not restricted to any one or more of the issues determined by the LVT.

5. At the review hearing Sarum was represented by Mr K Singleton of Trethowans, solicitors, of Salisbury, Wiltshire and Ms Genevieve Parke of counsel appeared for the respondents. By arrangement with the parties on 19 October 2009 I made an unaccompanied external inspection of the appeal property and the other comparables which had been mentioned.

### **The review appeal**

6. At the close of the review hearing I informed the parties that I would allow the appeal in respect of the extended lease value issue only. I then heard the appeal on that issue by way of rehearing. The purpose of this decision is to provide the reasons for both my decision on the review appeal and my decision following the rehearing.

## Issue 1 – Extended lease value

7. 20 Mountview Road is a three storey Victorian brick built terrace property with a slate roof in a quiet residential street. It was converted into three flats in about the mid 1980s. There is a small garden at the front of the property and a larger garden at the rear. Neither garden is included in the demise of the appeal property, which is situated at first floor level. It comprises a living room adjacent to an open plan kitchen, two bedrooms, wc/shower and bathroom. Access to the individual flats in the building is via a carpeted communal entrance hall and stairway.

8. The appellant's main criticisms of the LVT's assessment of the extended lease value (£361,386) related to its treatment of the price paid close to the valuation date for the existing lease of the appeal property itself with the benefit of a valid notice to acquire an extended lease (£355,000) and the price paid in October 2007 for 20a Mountview Road, on the lower ground floor of the same building (£395,000). The latter price was agreed on the basis that the buyer's solicitors would retain £28,650 to be paid for the lease extension, with any surplus to be refunded to the vendor on completion of the extension.

9. The LVT dealt with the value of the extended lease in the following terms:

“8. Mr Stone, on behalf of the Applicants, gave evidence referring to the comparables he had set out at paragraph 9 of his report. Although a number of properties are listed at paragraph 9, he conceded that really the main comparable for use before the Tribunal was Flat 3, 32, Mount View Road. This property is 6 doors away and is part of a relatively recently refurbished conversion. The flat sold for £365,000 in December 2007, together with a share of the freehold. It should be mentioned that in the instant case, the existing lease has 77.7 years to run and the agreed valuation date is 10 July 2007. Adjusting the sale price by application of the Land Registry price index, to bring it in line with the valuation date, produces a price of £353,907. Mr Stone contended that this property was very comparable to the subject premises.

9. Although this was his main comparable, he also referred to the sale of 32D Mount View Road, which is a top floor 2 bedroom flat in respect of which contracts were exchanged in early April 2008 at £355,000. Once again applying the price index produces a value of £340,430, although he distinguished this sale by saying that the subject premises are considered to be somewhat superior, given that they are a first floor and not second floor property and are without the effect of the eaves.

10. So far as Mr Church for the Respondents was concerned, he told the Tribunal that he had no other comparables, other than those referred to by Mr Stone, but his main contention was that he had spoken to Mr Webb (the Applicants' predecessor in title) who had told him that when purchasing the property, he had built into his calculations an expectation to pay between £12,000 and £18,000 for the new lease.

Accordingly, argued Mr Church, the commercial reality was that he had bought the property estimating its true value at about £375,000 with the extended lease. [In fact, as recognised by the LVT in para 13, Mr Webb was not the applicants' predecessor in title. He was one of the three applicants, having purchased the flat in the names of himself and his two daughters].

11. He supported his contention that this was the appropriate value of the extended lease by reference to page 95 of the bundle used at the hearing, which is a print out, appended to Mr Stone's report from the NetHousePrices.com website. That shows a sale of No.18a Mountview Road at a price of £374,000 in June 2007 (thus close to the valuation date). He argued that that was a long lease sale and thus was further fortified that the purchase price of the subject property in July 2007 at £355,000 was consistent with the first named applicant valuing the extended lease in a similar sum of about £375,000.

12. So far as the Tribunal is concerned, it is not clear from the brief particulars noted on the NetHousePrices website that the sale of 18a Mountview Road was indeed that of a long lease. Also, on inspection, although the evidence from Mr Church had been to the effect that the existence of a garden attached to the basement flat at 20a would have boosted the price by about £20,000, it seemed to the Tribunal that the garden was in fact very small and we could not be sure that it would have had an impact in that order. The Tribunal was shown no sales particulars for No.18a and in the absence of such particulars or any lease details, felt compelled to approach that transaction with some caution.

13. Clearly, when the first named applicant purchased for £355,000, he did have some expectation of paying a premium for the extension. However, the evidence of the sale of the flat at the nearby No. 32 Mountview Road, with three flats, all with shared freehold, indicates that he would not have been expecting to pay a vastly more inflated price for the long lease. Flat 3 at No.32 appears to be very similar to the subject property and this sold for £365,000 in December 2007. Neither of the parties' representatives had inspected the interior of that property and so were unable to assist, but the Tribunal did inspect from the exterior and it had clearly been modernised and was apparently in good condition. It is difficult for the Tribunal to see any real difference in the two parts of the road in which these two properties are situate.

14. Moreover, we find it difficult to see why a flat, which was sold as part of a completely and well refurbished building, should sell for less than the subject flat. The Tribunal prefers the evidence of this sale (that is to say flat 3, 32 Mountview Road) as being the best comparable for the Tribunal. In our view, the time difference between July and December 2007 in a relatively slow moving market would not have an especially significant impact on the price and there is no need to be over mathematical in order to adjust the sale price. Our view is that on all the evidence before us, the sum of £365,000 is approximately the right value to be attributed to the extended lease, with a share of the freehold. In order to strip out the inflation brought about by the freehold element, we adopt the approach used by both parties'

representative (that is to say applying a discount of 1.01%) producing a final figure for the extended lease value of £361,386.”

10. Mr Singleton submitted that the LVT could not reasonably have reached the conclusion that the value of the extended lease was only £361,386. Given the price paid for the existing lease (£355,000) and the fact that the freeholder had quoted £18,000 plus costs for the lease extension, and the existing lessee had offered £12,000 in its formal notice, the LVT’s conclusion was contrary to Mr Church’s evidence, accepted in cross-examination by Mr Stone, that the value of an enfranchisable lease was arrived at by deducting from the anticipated extended lease value the likely costs of obtaining the extension .

11. Mr Singleton added that the LVT’s decision was also inconsistent with the sale of an effectively extended lease of 20a Mountview Road for £395,000, which was agreed in August 2007 and completed in October 2007. In para 12 of its decision the LVT expressed doubt as to whether the garden of 20a was worth as much as £20,000. If it had been worth £15,000, the price paid for 20a suggested a value of £380,000 for the appeal property; the value would still be £375,000 even if the garden was worth £20,000. Mr Stone had accepted that evidence of flats in the same building as the flat to be valued was likely to be helpful and yet the LVT had apparently ignored this transaction in reaching its conclusion that the value of the extended lease was £33,614 less than the price paid for 20a. Furthermore, the LVT had based its decision on the sale of flat 32c (described by the LVT as flat 3) for £365,000 in December 2007, to include a share of the freehold. Mr Singleton said that, if that flat was to be used as a comparable, it would be wrong to disregard the sale of another flat in the same building, 32b, for which £410,000 was paid in August 2007, much closer to the valuation date.

12. In reply, Ms Parke said that the LVT did have regard to the price paid for flat 20a, since it specifically referred to the value of that flat’s garden in para 12 of its decision. The LVT considered this evidence, and gave it the weight that it felt to be reasonable. Moreover, although Mr Church had referred orally to the sale of 20a at the LVT hearing, and cross-examined Mr Stone on the point, he had not done so in his written submission.

13. It is apparent from para 13 of its decision that the LVT concluded that, if one added the anticipated enfranchisement cost to the price paid for the existing lease of the appeal property, one arrived at a price which seemed excessive by reference to that paid for 32c Mountview Road, a flat in a completely refurbished building. That conclusion was in my view one which it was open to the LVT to reach, provided it had also taken into account all the other evidence before it. I am not satisfied that it did so. The LVT did not refer at all to the price paid for 32b, although this had been relied on by Mr Church. The evidence of 20a, in the same building as the appeal property, had also formed an important part of the freeholder’s case but, apart from an inconclusive reference to the value of its garden, the LVT appears not to have considered the significance of the price paid for that property when it reached its conclusion. Certainly, the LVT did not explain the considerable differences between the sale prices of 20a and 32b and its own valuation figure. Since Mr Stone had agreed that the price paid for a property in the same building provided important evidence, the LVT’s apparent failure to take the sale of 20a into account amounted in my view to an error of law. Similar considerations apply to the LVT’s reliance on one flat in 32 Mountview Road, without explaining why it had

rejected another flat in the same building which sold closer to the valuation date. The appeal is therefore allowed on the issue of the long lease value.

### Issue 2 – Existing lease – value of rights

14. On the second issue, Mr Singleton submitted that the LVT's adjustment of only 2½% to the price paid for the existing lease, to reflect enfranchisement rights and the fact that formal notice had been served requiring a new lease, was not sustainable. At the LVT hearing Mr Stone had agreed in cross-examination that the fact that a valid notice had been served was a valuable benefit. The quantification of this benefit was distinct from the substantial discount which a purchaser would require if he was not entitled to demand an extended lease as of right. Ms Park disagreed with that submission and I reject it. The assessment of the correct deduction to reflect the benefits of the Act is difficult (see the Tribunal's comments on relativity in *Arrowdell Ltd v Coniston Court (North) Hove Ltd* [2007] RVR 39 at para 57). The evidence before the LVT included a number of relativity graphs, showing leasehold value without Act rights as a percentage of freehold value, prepared by Beckett and Kay and revised in 2008. This did not distinguish between those leases where a notice had been served and those without such a notice. The relationship between the LVT's estimate of the existing leasehold value without rights (£346,125) and its freehold valuation (£365,000) was 94.83%, which is within the range shown on the Beckett and Kay graph for leases with 77.7 years unexpired. In those circumstances, bearing in mind the difficult nature of its task, it was in my view open to the LVT to arrive at the value for the existing lease that it did. The appeal on this aspect of the LVT's decision is therefore dismissed.

### Issue 3 – Capitalisation rate

15. On the issue of the capitalisation rate, Mr Singleton said that the LVT had been wrong to base its decision to adopt 7% on settlements which Mr Stone had reached in other enfranchisement negotiations. Such evidence was self-perpetuating and therefore unreliable. The LVT should have used its own expertise and accepted Mr Church's rate of 6%. Ms Parke submitted that the LVT was entitled to arrive at a rate of 7% based on the evidence before it.

16. The LVT may use its expertise in assessing the weight to be given to the expert evidence before it, but it cannot rely on evidence which has not been put to the parties for their comments (*Arrowdell*, para 23). Mr Church's evidence at the LVT hearing consisted principally of the sale of a portfolio of residential ground rents, which he had acquired in December 2007 for approximately £400,000, and which he said represented a yield of approximately 5.75%. I do not consider that this evidence was conclusive. It involved a subjective apportionment of the sale price between the existing income and the reversion. As explained by the Tribunal in *Cadogan v Sportelli* [2007] 1 EGLR 153, at paras 65 to 67, and approved by the Court of Appeal [2008] 1 WLR 2142 at para 87, market evidence is of limited assistance in calculating the rate at which the reversionary value is to be deferred. If Mr Church had chosen a different rate at which to defer the reversionary element of the portfolio, this would have had a significant effect on the resultant capitalisation rate. Mr Singleton's criticisms of the settlement evidence, which was relied upon by Mr Stone and accepted by the

LVT, are not without substance. Nevertheless, I do not think it can be said that the evidence produced by Mr Church was of such weight that the LVT was bound to prefer it to Mr Stone's comparables. None of the evidence was ideal and in my view the LVT cannot reasonably be criticised for having reached the conclusion that it did on the evidence before it. The appeal on the capitalisation rate therefore fails.

### **The appeal by way of rehearing**

17. Mr P A Church FCA gave expert evidence for Sarum at the rehearing of the appeal against the LVT's decision on the extended lease value. He has negotiated several hundred lease extensions since 1986 and has considerable market experience of purchasing ground rent investments on his own account and on behalf of clients. Two flats in 20 Mountview Road were sold close to the valuation date and in Mr Church's opinion these provided the best evidence of the value of a long lease of the appeal property.

18. The first transaction was the sale, in July 2007, of the unextended lease of the appeal property itself. The freeholder had quoted a premium of £18,000 for an extension and, some months later, on 9 June 2007, Mr Stone advised the previous lessees that the premium payable would be in the region of £13,820. The price paid for the existing lease was £355,000. It was a condition of the sale that the vendor would serve a notice under section 42 of the 1993 Act, offering to pay a premium of £12,000.

19. Mr Church said that, in calculating the price he was prepared to pay for a short lease, a prospective purchaser would firstly assess the value of the extended lease in the property and then deduct the likely cost of obtaining an extension, plus professional costs and a contingency allowance. He had adopted this approach himself and he believed that it was the method which would be used by any rational purchaser.

20. Mr Webb, who purchased the existing lease in the appeal property on behalf of himself and his daughters, would have known the price quoted by the freeholder some months before notice was served and that the existing lessees had offered £12,000. He would have been advised that the decision to proceed with the application for a lease extension would involve him in substantial legal and valuation costs. It was common for a purchaser to obtain an indemnity as to the total costs of extension from the vendor. Where, as in the case of the appeal property, no such indemnity was given, Mr Church believed that any sensible purchaser would build in a contingency allowance. He therefore thought that Mr Webb would have deducted at least £20,000 from his estimate of the extended lease value. Mr Church considered that, in the light of this important evidence, the long lease value was in the order of £375,000/£380,000.

21. Mr Church's second approach was to consider the sale for £395,000 of 20a Mountview Road, which was agreed in August 2007 and completed in October 2007. 20a was in the same building as the appeal property. The terms of the sale required the vendor to bear all the costs of obtaining the lease extension. Mr Church used the Land Registry index for flats and



maisonettes in the same postcode to reflect the increase in values between July and August 2007. He arrived at an equivalent July 2007 value of £391,846, from which he deducted £20,000, being the maximum figure at which the LVT had valued the split garden, which 20a enjoyed but the appeal property did not. He thus arrived at a value, based on the sale of 20a, of £371,846, or £376,946 if the garden was worth £15,000. It was in the appellant's favour that these calculations did not reflect the fact that the useable area of 20a (574 sq ft) was slightly smaller than that of the appeal property.

22. In his expert report, Mr Church also relied on the sale of 32c Mountview Road. In oral evidence, however, he said that he now realised that the sales particulars upon which he had based his analysis in fact related to another flat in the same building. In those circumstances he no longer relied on this transaction, but his conclusion that the extended lease value was £375,000 remained unchanged.

23. Mr C J Stone is a director of Prickett and Ellis Surveyors Limited of Muswell Hill. He has had extensive experience of valuing and negotiating agreements under the Act and currently deals with at least 200 cases a year. Like Mr Church, Mr Stone relied on the sale of 32c in his expert report. This flat sold in December 2007 for £365,000 with a share of the freehold. In oral evidence Mr Stone accepted that the sales particulars on which he had relied related to flat 32d, and that they showed a total area of 532 sq ft, not 562 sq ft as he had previously suggested. He considered, however, that since flat 32d was in the attic, flat 32c on the first floor of the same building must be larger than 532 sq ft, and similar in size to the appeal property.

24. Mr Stone did not agree with Mr Church's method of assessing the value of the extended lease by reference to the price paid by Mr Webb for the shorter lease. He said that a purchaser's perception of market value at the time of purchase was not the same as the market value. During the summer of 2007 the housing market reached what subsequently proved to be the peak of a sustained boom, with no apparent end in sight at the time. In such circumstances deals were struck with little reference to market value, but in anticipation that by the completion date the value would have risen by at least 2%. The arithmetical process suggested by Mr Church was, in Mr Stone's view, unlikely to have formed part of the purchaser's thinking.

25. As for the sale of 20a for £395,000, although this was a useful comparable it suffered from the disadvantage that the price needed to be adjusted to reflect the fact that it included a garden. 32c had essentially the same accommodation as both 20a and the appeal property but no garden and it sold in December 2007 for £365,000. Since 20a had achieved £395,000, this suggested that the value of a garden was £30,000.

26. In cross-examination Mr Stone agreed that the normal method of valuing enfranchisable leases was to assess the value of an extended lease and then deduct the likely cost of obtaining the extension, including fees and a contingency figure. He also agreed that similar sized flats in the same building as the flat being valued provided very useful evidence. Nevertheless, he had reservations about the relevance of the sale price of 20a because of the unusual sale

arrangement, whereby the vendor offered an additional indemnity of £6,350 in case the retention figure of £28,650 was insufficient to cover the full cost of obtaining an extended lease. Moreover, the fact that the vendor was prepared to relinquish all control over the negotiations for a new lease was unusual and suggested that he was extremely happy with the agreed price. He considered that the price paid was above market value, but it was very difficult to be sure in a rapidly rising market. He also agreed that the additional value attaching to a garden could vary considerably, depending on the particular requirements of the purchaser.

27. In the light of the evidence and my external inspection of the two buildings to which the comparable evidence relates, I am satisfied that the two transactions in 20 Mountview Road are more helpful than the assignment of 32c. The primary reason for this conclusion is that, whereas both experts have inspected the appeal property and 20a, and have agreed details of their size, accommodation and condition, there is no reliable information as to the size of 32c and neither expert has inspected that flat.

28. I therefore start with the premium paid for the existing lease of 20c. This transaction has the benefit that, since it concerns the appeal property itself, no adjustment is necessary to reflect differences in location, size or condition. At the conclusion of the oral evidence it was common ground that the price paid, £355,000, is likely to have represented the purchaser's assessment of the value of an extended lease, less a deduction for the costs of obtaining an extension, including professional fees and a small contingency allowance. When he decided how much to offer for 20c, Mr Webb knew that the freeholder had quoted £18,000 for an extended lease and that the existing lessee had formally offered £12,000, and been advised that the appropriate price was £13,820. Taking account of the need to pay his own legal and surveyor's costs, and the freeholder's legal and valuation costs, and allowing a small contingency, I consider that the price paid for the existing lease suggests an extended lease value in the region of £372,500 to £375,000. I am unable to accept Mr Stone's suggestion that the price paid for the existing lease did not reflect market value because the purchaser was anticipating a future increase in value. The price paid for a property will reflect a number of factors, including perceptions of future changes in the market, whether positive or negative. Other things being equal, however, the price at which a property is sold at a particular date is strong evidence of its market value at that date. If the price paid for the existing lease reflected the anticipation of a rising market, it is difficult to see why the price paid for an extended lease on the same date would not have done so as well.

29. I accept Mr Church's evidence that there was nothing unusual in the sale contract for No.20a, which provided that Mr Stone should continue to negotiate the premium payable for the lease extension, since he was fully conversant with the position and would owe a duty to both the assignor and the new owners. Mr Stone also cast doubt on the price of £395,000 for an effectively extended lease of 20a, because the vendors' agreement to offer a small indemnity in excess of the retention figure was unusual. This does not in my view indicate that the sale price was excessive. Mr Church's suggestion that the assignors moved overseas immediately following the sale was not challenged. In those circumstances, Mr Church was in my opinion right to suggest that the indemnity would have been of little value to the purchaser.

30. Mr Stone deducted £30,000 from the price paid for 20a to reflect the value of the garden which was included in the sale. This figure was based on a comparison between the appeal property and 32c but, as I have said, Mr Stone has not inspected 32c and there is no reliable information as to its size or condition. Moreover, Mr Stone accepted in cross-examination that the additional value of a garden to a purchaser can vary considerably. The LVT decided that the very small garden at 20a might be worth less than £20,000. If the value were as much as £20,000, the evidence of 20a suggests that the appeal property was worth £371,846; and it would be higher if (as could well be the case) the garden was worth less than £20,000.

31. In the light of what I consider to be the best evidence, namely the sales of the appeal property and 20a, I find that the value of the extended lease of the appeal property was £372,500. If the LVT's valuation calculation is adjusted to reflect this finding, it produces an enfranchisement price of £18,475 (appendix 1).

32. The appeal is allowed. The premium payable by the respondents for an extended lease in 20c Mountview Road, N4 4HX is £18,475. The circumstances in which costs are awarded in appeals of this nature are very limited. In my opinion no such circumstances could possibly arise in this case and I make no order as to costs.

Dated 21 October 2009

N J Rose FRICS

## Appendix

### 20c MOUNTVIEW ROAD, LONDON, N4 4HX DETERMINATION BY LANDS TRIBUNAL OF PREMIUM PAYABLE

<b>A Diminution in the value of the Landlord's interest</b>			
Term 1	100		
YP for 11.7 years @ 7%	7.8126	781	
Term 2	200		
YP for 33 years @ 7%	12.754		
PV for 11.7 years @ 7%	<u>0.4531</u>	1,156	
Term 3	400		
YP for 33 years @ 7%	12.754		
PV for 44.7 years @ 7%	<u>0.0486</u>	248	
Reversion to Freehold Value (£372,500 plus 1%)	376,225		
Defer 77.7 years @ 5%	<u>0.0226</u>	<u>8,503</u>	
<b>Landlord's interest before lease extension</b>		10,688	10,688
Less Reversion to freehold value	376,225		
Defer 167.7 years @ 5%	<u>0.0003</u>		
<b>Landlord's interest after lease extension</b>			<u>113</u>
<b>Diminution in the value of the Landlord's interest</b>			10,575
<b>B Landlord's share of Marriage Value</b>			
<b>Interests after Marriage</b>			
Value of extended lease	372,500		
Landlord's interest after lease extension	<u>114</u>		
Value of combined interests after lease extension		372,614	
<b>Less interests before Marriage</b>			
Value of Lessee's current interest	346,125		
Landlord's interest before extension	<u>10,688</u>		
Value of interests before extension		<u>356,813</u>	
<b>Marriage Value</b>		15,801	
Landlord's share 50%			<u>7,900</u>
<b>Premium Payable for Lease extension</b>			<u>18,475</u>