

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
6/16/2023 8:00 AM  
BY ERIN L. LENNON  
CLERK

Supreme Court No. 102105-4  
(COA No. D2 564262)

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THE SUPREME COURT OF THE STATE OF WASHINGTON

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Linda Parry

Plaintiff-Appellee

v.

Herbert R. Pearse

Defendant-Appellant

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ON APPEAL FROM THE SUPERIOR COURT IN AND FOR THE  
COUNTY OF PIERCE, WASHINGTON

ORIGINATING CASE NO. 21-2-05874-6

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PETITION FOR REVIEW

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Herbert R. Pearse  
PO Box 690  
Vaughn, Washington 98394  
[herb@eco-tec-inc.com](mailto:herb@eco-tec-inc.com)  
(253) 884-6804  
Pro Se Appellant

TABLE OF CONTENTS

TABLE OF CONTENTS.....i

TABLE OF AUTHORITIES.....ii

    A. IDENTITY OF PETITION AND DECISION BELOW.....1

    B. ISSUES PRESENTED FOR REVIEW.....1

    C. STATEMENT OF THE CASE.....1

    D. ARGUMENT.....4

**This court should grant review because the original complaint in this action was never properly served, something overlooked twice and a hearing was held without notice in violation of Mr. Pearse’s right to due process.....**

*a. Not only did the Appellee participate in service of the Complaint, she served a completely different complaint, one that she claimed to have filed pro se, then returned two days later with the summons filed by Counsel.....4*

*b. Appellant appropriately filed for immediate relief from a Default Judgment taken against him and the Court ignored the procedural errors.....5*

*c. Appellant was locked out of his home even though a stay was granted in the action, Appellee then ransacked Appellants personal possessions and stole private financial records. Appellee used those financial records to obtain and submit a levy on Appellants monies. The appellee moreover falsified information as to deposits and information to get approval from the court to obtain those monies.....6*

*d. The Court of appeals opinion raises significant question of law under the United States Constitution and raises an issue of public interest, justifying review by this Court.....6*

E. CONCLUSION.....7

TABLE OF AUTHORITIES

**Washington Supreme Court Cases**

In re Schroeder, 124 Wn.2d 836, 882 P.2d 773 (1994).....7

Jacobsen v. Allen, 98 Wn.2d 535, 656 P.2d 1024 (1982).....8

Parkridge at Lynnwood, L.P. v. Neff, 184 Wn.2d 768, 366 P.3d 469(2016)...7

Riggs v. Parr, 178 Wn.2d 249, 312 P.3d 97 (2013).....9

State ex rel. Newland v. Smith, 48 Wn.2d 656, 296 P.2d 275 (1956).....9

**Washington Court of Appeals Cases**

Gentiva Health Servs. v. Centennial Ins. Co., 273 P.3d 1222, 1225-26 (Wash. Ct. App. 2012).....9

## IDENTITY OF PETITIONER AND DECISION BELOW

Herbert Pearse, the appellant, requests this Court accept review of the opinion of the Court of Appeals in appeal case number D2 564262. A copy of the opinion is attached in the Appendix.

### A. ISSUES PRESENTED FOR REVIEW

Did the lower courts error in denying the motion to vacate the default judgment. Did the lower courts error in allowing stolen documentation, financial records and confidential business records to be used for purposes of a garnishment. Also, did the lower courts error in review of the accuracy of information provided in the garnishment request. Finally, did the appeals court error in granting attorneys fees Plaintiffs attorney following the theft of personal information, concealment of that theft and fraud upon the court.

### B. STATEMENT OF THE CASE

This is an appeal from an Order Denying Defendants Motion to Vacate the Default Judgment. In January of 2021, Plaintiff Linda Parry contacted Defendant Herbert R. Pearse asserting that she was the successful purchaser of the subject property. Mr. Pearse was immediately concerned and in shock as he was in active litigation with this lender and was not notified of any sale. Immediately, Linda Parry made demands for access and gave Mr. Pearse a 60-day notice to vacate. On March 19, 2021, Linda Parry sent Appellant a Complaint for Ejectment and a Summons form. Neither were filed or served properly. Appellant amended his active litigation against his lender and added Ms. Parry as a party. On April 25, 2021, Ms. Parry

again mailed a Complaint for Ejectment and a Summons to Mr. Pearse. Again, these documents were not filed nor properly served. On June 4, 2021, a woman who was later identified as Indrya Miller accompanied Linda Parry to the property to serve the same Complaint for Ejectment. The document (the same document as the two prior Complaints) was not filed and did not contain a summons. On June 7th, 2021, the two women (Ms. Miller & Ms. Parry) returned to the property with the summons document. This document did appear to be filed and contained a handwritten case number, however the document referenced in the Summons was vastly different than the Complaint received. Defendant researched the case filing online in preparation for filing his response and noted immediately that the Complaint for Ejectment which was filed in the Court was entirely different than the copy received from Plaintiff. However, on June 28, 2021, Defendant submitted his answer to the Court through the e-filing system. The Answer was docketed, and Defendant awaited a hearing or next steps from the Court. To Defendant's surprise, Plaintiff held an Ex Parte hearing on June 29, 2021, and obtained a default judgment. Defendant reviewed the docket again a few days later and noted the Writ of Ejectment. The same day, Defendant received a call from Deputy Brian Swalander who advised him that an eviction was scheduled for July 21, 2021. Defendant filed an OSC with the Court and set a Motion to Vacate the Default Judgment. The Court granted the OSC which provided Defendant a stay of the eviction order, however, Defendant was removed anyway. Plaintiffs' counsel filed

a Motion to terminate the stay the following day after Defendants removal, which the Court granted.

Plaintiff proceeded with the removal of Defendants personal possessions.

Defendant hired a moving company to retrieve his possessions as he was threatened with arrest if he returned to the premises. Initially, Plaintiff seemed as if she would willingly participate in the extraction of Defendants personal property, however; on the day of the move, Plaintiff caused consistent issues and delays. The moving company had a detailed list (provided by Mr. Pearse) and photographs (taken by Ms. Parry) of personal property. Ms. Parry got combative with the movers, denied them access to areas of the home and shop and would not allow them to retrieve possessions. Ms. Parry began loading trash and another person's belongings into the moving company's truck. The event ended with the movers being thrown off the property and a significant number of items missing. Multiple emails were sent to Plaintiff pleading with her to return the personal property as some of it was priceless family heirlooms, personal financial/legal documents and needed appliances/tools. Plaintiff refused to acknowledge the emails or the missing items. Defendant received a signed affidavit from the movers attesting to the fact the items were missing and that Plaintiff was hostile. Three days later, the stolen financial documents were used by Plaintiff in her Application for Garnishment. Plaintiff and her Attorney combed through years of sensitive and private financial documents that she purposely stole from Defendants filing cabinet and filed the affidavit using said documents. In Ms. Parry's affidavit she lists deposits twice and

includes several income tax return deposits to show that there are sufficient monies available for her garnishment. Her affidavit was submitted under the penalty of perjury withstanding the clear and unequivocal falsities. As a direct result, Defendants monies were garnished, and the court denied his objection.

### C. ARGUMENT

This Court should grant review because the failures of service were never corrected, and the two prior courts overlooked the issue. The originating court allowed the proceedings to continue after being fully informed of the service failures. *Parkridge at Lynnwood, L.P. v. Neff*, 184 Wn.2d 768, 366 P.3d 469 (2016) - In this case, the court held that a plaintiff participating in an unlawful detainer must properly serve process on the defendant/tenant before they can file an eviction action. Proper service requires that all parties must be provided a Summons that Explains the detainer action, or at other times where specific procedures are necessary to ensure proper notice. *In re Schroeder*, 124 Wn.2d 836, 882 P.2d 773 (1994) -The court held that due process requires that a party be given actual notice and an opportunity to be heard **before they are deprived of their property (Emphasis Added)**. If a landlord does not follow the proper legal procedures for serving an eviction notice, then the tenant may not actually receive proper notice, thus violating their due process rights. *In Ex-Betweenay v. Langdon*, 173 Wn.2d 484, 269 P.3d 960 (2012) -The court rejected a landlord's argument that the service of a 3-day notice to vacate meeting minimal the standards of Process under Washington Real Property and Description. The court recognized that a

tenant faced with doubt requires a more extensive process of service, necessary to ensure full awareness of the legal effect placed on notice. In *Rainier View Homeowners Ass'n v. Aetna Life Ins. Co.*, 141 Wn.2d 138, 3 P.3d 876 (2000) - the court emphasized that "actual notice" means that notice is communicated effectively to the recipient. It cannot be satisfied by merely placing an eviction notice on the tenant's door, even if that counts by the jurisdiction's theory as a valid attempt.

Defendant was not provided proper service of the actual complaint filed in the underlying case. The Plaintiff actively participated in the service of documents and to date, Plaintiff has never corrected the deficiencies of service. Moreover, affidavits of service were provided which were false in nature. The judgments provided under the falsified and insufficient service are void as a matter of law.

Following the void judgment and writ of possession, Plaintiffs sought to recover \$40,000.00 in attorneys' fees on a contract in where counsel was paid a flat rate for services. Plaintiff stole financial records from Defendant as outlined above and used those documents to procure a garnishment from Defendants account. Defendant who is a retired veteran, and whose funds were his pension and social security deposits. Defendant filed documents with the Court outlining the source of funds in his account. Plaintiff falsified information she provided to the court, listing multiple deposits repeatedly to show that funds were available from approved sources for collection. Again false. The statements made by Counsel and Plaintiff were fraudulent. Resulting in fraud upon the court. In *Jacobsen v.*



*Allen*, 98 Wn.2d 535, 656 P.2d 1024 (1982) - the Washington Supreme Court upheld sanctions imposed upon a party who was found to have committed fraud on the court in a divorce proceeding by presenting a forged decree that they claimed was a final decree when it was actually a draft. The party's disrespectful behavior towards the court was also considered to be contemptuous and substantially prejudiced the opposing party's case. The court what the Washington Supreme Court describes as case law "essential to safeguards of the integrity of our courts and substantial justice. In *State ex rel. Newland v. Smith*, 48 Wn.2d 656, 296 P.2d 275 (1956) - This case does not involve the theft of documents directly, but the general proposition involved relates to the duty of someone engaging with the court to be truthful and their ethical promise compelling them tell the truth: it commences by recognizing that the courts assume people will be honest and open in their dealings with the court. *Gentiva Health Servs. v. Centennial Ins. Co.*, 273 P.3d 1222, 1225-26 (Wash. Ct. App. 2012) - In this case, the Washington Court of Appeals upheld sanctions, including attorney fees and costs against a party that engaged in misconduct that interfered with the integrity of the discovery process. The court found the party's lack of full disclosure and misrepresentations regarding electronic evidence collection and evidence production particularly egregious, justifying the imposition of sanctions. *Riggs v. Parr*, 178 Wn.2d 249, 312 P.3d 97 (2013) - In this case, the Washington Supreme Court acknowledged that misconduct during a trial can result in sanctions (e.g. paying fees and limits on litigation opportunities) and even dismissal of a case, particularly where such

misconduct involves the violations of any clear rules governing evidence and procedures in court. The sanctions should not only help settle a lawsuit but ought to offer remediation in circumstances like when a party concealed evidence-related wrongdoing, such as stealing documents.

Plaintiffs never responded to or acknowledged the facts that they stole confidential financial documents, falsified the nature of deposits, etc in order to get an order granting their garnishment requests. They committed fraud on the court and the monies awarded for attorneys' fees were obtained by fraud on the court. As such, they should also be void.

D. CONCLUSION Defendants pray this court sees the errors herein and grants review of the decisions.

Dated this June 5, 2023

Respectfully submitted,  
/s/ Herbert R. Pearse  
PO Box 690  
Vaughn, Washington 98394  
[herb@eco-tec-inc.com](mailto:herb@eco-tec-inc.com)  
(253) 884-6804  
Pro Se Appellant

CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that on June 5, 2023, I served a copy of Appellants

Motion by United States Mail on the following parties:

Mark D. Nelson  
Law Offices of Mark D. Nelson  
2727 Hollycroft Street, Suite  
Gig Harbor, WA 98335

/s/ Rene Henley

# APPENDIX



# Washington State Court of Appeals Division Two

909 A Street, Suite 200, Tacoma, Washington 98402

Derek Byrne, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> **OFFICE HOURS:** 9-12, 1-4.

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June 2, 2023

Herbert R. Pearse  
4655 NW Bernard St  
Silverdale, WA 98383  
kmarie4983@aol.com

Mark D Nelson  
Law Office of Mark D. Nelson, PLLC  
2727 Hollycroft St Ste 460  
Gig Harbor, WA 98335-1312  
mark@markdnelsonlaw.com

**CASE #: 56426-2-II/Linda Parry, Respondent v. Herbert Pearse, Appellant**

Appellant & Counsel:

On the above date, this court entered the following notation ruling:

### **A RULING BY COMMISSIONER TRIEBEL:**

After not filing any objection to an affidavit for attorney fees, Appellant filed a motion to modify a commissioner ruling awarding those fees. This court denied the motion to modify and ordered that Respondent be awarded additional fees for the work performed responding to the motion to modify. Respondent's counsel filed an affidavit detailing a basis for an additional \$1,050 in fees. Counsel's hourly rates are reasonable and consistent with market rates and the three hours spent drafting and editing the response were reasonable. Accordingly, Appellant is ordered to pay an additional \$1,050 in attorney fees to Respondent for the work performed responding to the motion to modify.

Very truly yours,

Derek M. Byrne  
Court Clerk

March 21, 2023

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

LINDA PARRY, an individual,

Respondent,

v.

HERBERT R. PEARSE, an individual,

Appellant.

No. 56426-2-II

RULING ON ATTORNEY FEES

In it's unpublished opinion filed on December 20, 2022, this court awarded Respondent Linda Parry attorney fees. Parry requests \$3,389 in attorney fees. Appellant Herbert Pearse did not object to the attorney fee request. And upon review, it appears reasonable. Accordingly, it is hereby

ORDERED that Respondent Linda Parry is awarded \$3,389 in attorney fees against Appellant Herbert Pearse.



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Karl R. Triebel  
Court Commissioner

cc: Mark D. Nelson  
Herbert R. Pearse, Pro Se

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

December 20, 2022

**DIVISION II**

LINDA PARRY, an individual,

Respondent,

v.

HERBERT R. PEARSE, an individual,

Appellant.

No. 56426-2-II

UNPUBLISHED OPINION

MAXA, J. – Herbert Pearse appeals the trial court’s denial of his motion to vacate a default judgment entered against him and in favor of Linda Parry. Parry’s lawsuit sought ejectment of Pearse from real property that Parry had purchased at a foreclosure sale. Pearse claims that the default judgment is void because he was not properly served with the summons and complaint. He also alleges the trial court wrongly entered an order allowing Parry to garnish his bank account following entry of the default judgment.

We hold that the evidence shows that Pearse was properly served with Parry’s lawsuit and therefore there was no basis for vacating the default judgment. We also decline to consider Pearse’s garnishment argument because he did not appeal that order. Accordingly, we affirm the trial court’s order denying Pearse’s motion to vacate the default judgment entered in favor of Parry.

**FACTS**

Pearse secured a bank loan for property in Gig Harbor. He defaulted on the loan, and the bank foreclosed on the property. Parry purchased the house at a trustee’s sale in December 2020.

After the trustee's sale, Pearse refused to vacate the property. In May 2021, Parry filed a verified complaint against Pearse for ejectment and damages. Parry sought an order restoring her to possession of the property. On June 4, Indrya Miller personally served the verified complaint on Pearse and filed a certificate of service. On June 7, Miller served the summons and order setting case schedule on Pearse and filed another certificate of service.

Pearse neither appeared nor answered Parry's complaint within 20 days as required by CR 12(a)(1). On June 29, Parry filed a motion for an order of default and a default judgement. The same day, the trial court entered an order of default and a default judgment. The default judgment stated that Parry was entitled to recover possession of the property, ordered the issuance of a writ of ejectment, and assessed damages against Pearse in the amount of \$37,323.44 plus attorney fees and costs.

On July 19, Pearse filed an ex parte motion to vacate the default judgment and stay enforcement of the writ of ejectment. The trial court entered an order staying enforcement of the judgment and the writ of ejectment and scheduling a show cause hearing on Pearse's motion. The trial court later vacated the order, finding that Pearse had not made a showing of substantial evidence supporting a prima facie defense and that Pearse should have given Parry notice of his motion. The court ordered that the default judgment remain in full force and effect.

A Pierce County sheriff served the writ of ejectment and removed Pearse from the property. Parry subsequently requested a writ of garnishment regarding Pearse's bank account. Pearse asserted that the funds held by the bank were exempt. Following a hearing, the trial court entered an order requiring Pearse's bank to pay the funds in his account to Parry pursuant to the writ of garnishment.



Pearse filed a motion to vacate the default judgment. He argued that the complaint served on him was not the complaint filed with the court and that Parry had improperly participated in the service. In her opposition, Parry pointed out that Pearse previously had filed five lawsuits claiming ownership of the property, and all five had been dismissed with prejudice. Parry also submitted a declaration from Miller in which Miller confirmed that she personally served Pearse with the verified complaint and the summons. The trial court denied Pearse's motion to vacate the default judgment.

Pearse filed a notice of appeal, designating for review only the trial court's order denying his motion to vacate the default judgment.

## ANALYSIS

### A. MOTION TO VACATE DEFAULT JUDGMENT

Pearse argues that the trial court erred in denying his motion to vacate the default judgment because he was served improperly. We disagree.

Under CR 12(a)(1), a defendant generally must file an answer within 20 days after service of the summons and complaint. If the defendant fails to answer or otherwise defend within 20 days, a plaintiff can move for default under CR 55(a)(1). Once a default order has been entered, a plaintiff can obtain a default judgment under certain circumstances. CR 55(b).

CR 55(c)(1) states that a trial court may set aside a default judgment in accordance with CR 60(b), which addresses the vacation of judgments. Under CR 60(b)(5), a judgment can be set aside if it is void. A judgment is void for lack of jurisdiction if the defendant was not properly served with the complaint. *Am. Express Centurion Bank v. Stratman*, 172 Wn. App. 667, 672, 292 P.3d 128 (2012). We review de novo whether the defendant was properly served. *Kim v. Lakeside Adult Family Home*, 185 Wn.2d 532, 554, 374 P.3d 121 (2016).

Pearse claims that service of process was not proper. However, Miller's declaration establishes that she personally served Pearse with the same verified complaint for ejectment and damages that was filed with the court. Pearse presented no evidence beyond his unsworn allegations that he was served with the wrong complaint and that Parry was the person who effected service. We conclude that Pearse has failed to establish that service of process was improper.

Accordingly, we hold that the trial court did not err in denying Pearse's motion to vacate the default judgment under CR 60(b)(5).

**B. ORDER GRANTING GARNISHMENT**

Pearse argues that the trial court erred in entering the order allowing Parry to garnish his bank account. We decline to consider this argument.

Under RAP 5.1(a), "[a] party seeking review of a trial court decision reviewable as a matter of right must file a notice of appeal." The notice must be filed within 30 days of the entry of the judgment the party wants reviewed. RAP 5.2(a). Moreover, RAP 5.3(a) requires a party to designate in the notice of appeal the order it wants the appellate court to review.

While Pearse assigns error to the writ of garnishment in his brief, he did not appeal the writ. Moreover, he did not designate that writ as an order he wanted this court to review in his notice of appeal. Instead, he designated only the order denying his motion to vacate the default judgment. For this reason, his arguments relating to the writ of garnishment are not properly before us and we decline to address this issue.

**C. ATTORNEY FEES ON APPEAL**

Parry requests an award of attorney fees on appeal to be paid by Pearse. Parry argues that we should award reasonable attorney fees under RAP 18.9(a), which allows an award of attorney

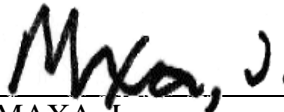
fees as sanctions for defending against a frivolous appeal. An appeal is frivolous if, considering the entire record, we determine that the appeal presents no debatable issues and is devoid of merit. *Lutz Tile Inc. v. Krech*, 136 Wn. App. 899, 906, 151 P.3d 219 (2007).

Here, Pearse's appeal does not raise any debatable issues. Accordingly, we award Parry her reasonable attorney fees on appeal.


CONCLUSION


We affirm the trial court's order denying Pearse's motion to vacate the default judgment entered in favor of Parry.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

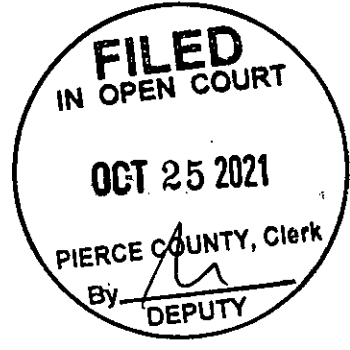
  
\_\_\_\_\_  
MAXA, J.

We concur:

  
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CRUSER, A.C.J.

  
\_\_\_\_\_  
VELJACIC, J.

10/28/2021 8:22:7 0131



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

LINDA PARRY, an individual,  
  
Plaintiff,  
  
vs.  
  
HERBERT R. PEARSE, an individual,  
  
Defendant.

No. 21-2-05874-6

ORDER DENYING DEFENDANT'S  
MOTION TO VACATE DEFAULT  
JUDGEMENT

This matter comes before the court on Defendant HERBERT R. PEARSE'S motion to vacate the Court's order of default entered June 29, 2021. Based on the records and files herein, the Court finds that HERBERT R. PEARSE has not made a showing of substantial evidence supporting a prima facie defense to Plaintiff's claims as Mr. Pearse has specifically asserted ownership of Ms. Parry's property in five previous lawsuits each of which was dismissed with prejudice and that Mr. Pearse was properly served a summons and complaint and had notice of these proceedings; therefore it is hereby

ORDERED that Defendant's Motion to Vacate the Court's June 29, 2021 Order of Default and Default Judgment is DENIED.

DONE IN OPEN COURT this 25<sup>th</sup> day of October 2021.

THE HONORABLE B. MCINVALLE

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Presented By:

Mark D. Nelson  
2727 Hollycroft Street, Suite 460  
Gig Harbor, WA 98335  
T: (253) 858-8985  
F: (253) 780-8066  
mark@marknelsonlaw.com  
Attorney for Plaintiff

Copy Received; Approved as to Form:

Herbert Pearse  
Defendant



**HERBERT PEARSE - FILING PRO SE**

**June 15, 2023 - 8:15 PM**

**Filing Petition for Review**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** Case Initiation  
**Appellate Court Case Title:** Linda Parry, Respondent v. Herbert Pearse, Appellant (564262)

**The following documents have been uploaded:**

- PRV\_Petition\_for\_Review\_Plus\_20230615201503SC711795\_6429.pdf  
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**Comments:**

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Sender Name: Herbert Pearse - Email: kmarie4983@aol.com  
Address:  
PO Box 690  
Vaughn, WA, 98394  
Phone: (830) 333-0985

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