

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

**RICHARD IVAN COX, GERARD COX, ALAN COX, PHILIP VERNON NICHOLLS, ERIC
ASHBY BENTHAM DEANE, OWEN BASIL KEITH DEANE,
MARJORIE ILMA KNOX, DAVID SIMMONS, ELNETH KENTISH,
GLYNE BANNISTER, GLYNE B. BANNISTER, PHILIP GREAVES
a.k.a. PHILP GREAVES, GITTENS CLYDE TURNEY,
R.G. MANDEVILLE & CO., COTTLE, CATFORD & CO.,
KEBLE WORRELL LTD., ERIC IAIN STEWART DEANE,
ESTATE OF COLIN DEANE, LEE DEANE, ERRIE DEANE, KEITH DEANE, MALCOLM
DEANE, LIONEL NURSE, LEONARD NURSE,
EDWARD BAYLEY, FRANCIS DEHER, DAVID SHOREY,
OWEN SEYMOUR ARTHUR, MARK CUMMINS, GRAHAM BROWN,
BRIAN EDWARD TURNER, G.S. BROWN ASSOCIATES LIMITED,
GOLF BARBADOS INC., KINGSLAND ESTATES LIMITED,
CLASSIC INVESTMENTS LIMITED, THORNBROOK
INTERNATIONAL CONSULTANTS INC., THORNBROOK
INTERNATIONAL INC., S.B.G. DEVELOPMENT CORPORATION,
THE BARBADOS AGRICULTURAL CREDIT TRUST, PHOENIX
ARTISTS MANAGEMENT LIMITED, DAVID C. SHOREY AND
COMPANY, C. SHOREY AND COMPANY LTD., FIRST
CARIBBEAN INTERNATIONAL BANK (BARBADOS) LTD., PRICE
WATERHOUSE COOPERS (BARBADOS), ATTORNEY GENERAL
OF BARBADOS, the COUNTRY OF BARBADOS, and JOHN DOES 1-25**

Defendants

**MOTION RECORD
OF PRICEWATERHOUSECOOPERS EAST CARIBBEAN FIRM
(Motion Returnable August 10, 2007)**

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PricewaterhouseCoopers East Caribbean Firm

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Gerard Cox, Alan Cox, Gittens Clyde Turney, R.G. Manderville & Co.,
Keble Worrell Ltd., Lionel Nurse, The Right Honourable
Own Seymour Arthur M.P., Mark Cummins, Kingsland
Estates Limited, Classic Investments Limited, The Barbados
Agricultural Credit Trust (more properly, Barbados Agricultural
Credit Trust Limited), the Attorney General of Barbados,
the Country of Barbados, The Honourable Elneth Kentish
and Malcolm Deane

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Defendants

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

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Plaintiff

- and -

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1-25

Defendants

**NOTICE OF MOTION
(Motion Returnable August 10, 2007)**

The defendant, PricewaterhouseCoopers East Caribbean Firm, incorrectly named in the title of proceeding as Price Waterhouse Coopers (Barbados) (hereinafter "PwC East Caribbean"), will make a motion to the court, on Friday, August 10, 2007 at 10:00 a.m. or as

soon after that time as the motion can be heard, at 114 Worsley Street, Barrie, Ontario, L4M 1M1.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR an order:

- (a) setting aside the service *ex juris* of the statement of claim herein on PwC East Caribbean pursuant to Rule 17.06 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 or in the alternative;
- (b) permanently staying the action pursuant to s.106 of the *Courts of Justice Act*, R.S.O. 1990, c. 43;
- (c) awarding costs of this motion to PwC East Caribbean; and
- (d) such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) PwC East Caribbean is a partnership constituted under the laws of Barbados which only carries on business in Antigua, Barbados, Grenada, St. Kitts and St. Lucia;
- (b) the defendant, Kingsland Estates Limited ("Kingsland"), is a corporation incorporated under the laws of Barbados which only carries on business in Barbados;

- (c) Kingsland engaged PwC East Caribbean from time-to-time to audit Kingsland's financial statements. Neither Kingsland, nor the plaintiff, has raised any issue with respect to the audits;
- (d) even if that were not the case, the audits, and all work relating thereto, were carried out by PwC East Caribbean in Barbados. PwC East Caribbean carried out no work, and provided no services, in Ontario;
- (e) further, PwC East Caribbean and Kingsland agreed that the audit engagements would be governed by the law of Barbados and that the Courts of Barbados would have exclusive jurisdiction to settle any claim, difference or dispute (including without limitation claims for set off or counterclaims) which might arise out of, or in connection with, the engagements;
- (f) all of the PwC East Caribbean audit staff who worked on the Kingsland audit are in Barbados;
- (g) all of the audit files and working papers of PwC East Caribbean are in Barbados;
- (h) the vast majority of the other defendants are persons or entities in Barbados;
- (i) the lands of Kingsland referred to in the statement of claim are in Barbados;
- (j) all other assets of Kingsland are in Barbados;
- (k) Barbados is the proper forum for this action, as it is the jurisdiction within which the matters set out in the statement of claim have their most real and substantial connection;

- (l) there is no real and substantial connection between Ontario and the action;
- (m) Ontario has no real and substantial connection with the action and Ontario is not the convenient forum for the adjudication of the claim;
- (n) section 106 of the *Courts of Justice Act* and Rules 17.06 and 21.01(3)(a) of the *Rules of Civil Procedure*; and
- (o) such further and other grounds as counsel may advise and this Honourable Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the affidavit of Marcus A. Hatch sworn May 18, 2007;
- (b) such further and other material as counsel may advise and this Honourable Court may permit.

May 18, 2007

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NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

RICHARD IVAN COX ET AL.

Defendants

Court File No. 07-0141

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Barrie

NOTICE OF MOTION

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Defendants

AFFIDAVIT OF MARCUS A. HATCH

Sworn May 18, 2007

**I, MARCUS A. HATCH, of the Parish of Saint James, Barbados MAKE OATH
AND SAY:**

1. I am the Managing Partner of the Barbados office of PricewaterhouseCoopers East Caribbean Firm. As such, I have personal knowledge of the matters hereinafter deposed, except to the extent that I state that my information is based on the information of others. In

these instances, I have identified the source of my information, which information I verily believe to be true.

2. I swear this affidavit in support of a motion to set aside the service *ex juris* of the statement of claim, or alternatively, to stay the action.

A. The Parties

3. The correct firm name for the entity named in the title of proceeding as “PricewaterhouseCoopers (Barbados)” is “PricewaterhouseCoopers East Caribbean Firm” (hereinafter “PwC East Caribbean”). PwC East Caribbean is a partnership duly constituted and subsisting under the laws of Barbados.

4. PwC East Caribbean is a partnership engaged in the practice and profession of, among other things, chartered accountancy, which carries on business in Antigua, Barbados, Grenada, St. Kitts and St. Lucia. PwC East Caribbean does not, and has not, carried on business in Ontario at any time.

5. Kingsland Estates Limited (“Kingsland”) is a private corporation incorporated under the laws of Barbados. Kingsland only carries on business in Barbados.

6. I do not have personal knowledge of the residence of all of the other defendants. However, I accept as correct the allegations in paragraphs 7 through 35 of the statement of claim which indicate that most of the other persons or entities are resident in Barbados.

B. PwC East Caribbean

7. Kingsland engaged the Barbados office of PwC East Caribbean from time-to-time to audit Kingsland’s financial statements. I am informed by Philip St. E. Atkinson (“Mr.

Atkinson”), the engagement partner responsible for the audit, that Kingsland has been dormant for some time. As such, PwC East Caribbean did not audit the company’s financial statements annually.

8. I am further informed by Mr. Atkinson, and believe, that Kingsland engaged PwC East Caribbean to audit the company’s financial statements for the years ended June 30, 1998 to June 30, 2005 by letter dated October 1, 2005 (the “Engagement Letter”). A copy of the Engagement Letter dated October 1, 2005 is attached as Exhibit “A” hereto.

9. Mr. Atkinson and Stephen Sayers, the team manager, completed the audits in accordance with the terms of the Engagement Letter. All of the audit work in connection with the audit of Kingsland’s financial statements was conducted at the company’s office in Bridgetown, Barbados. The examination was performed by Mr. Stephen Sayers, a staff member, and reviewed by Mr. Atkinson, the audit partner responsible for the engagement.

10. I am informed by Mr. Atkinson, and believe that, aside from Mr. Sayers, the only other individual involved in the audits was Ms. Bernadette Austin, a clerk who was responsible for assisting Messrs. Atkinson and Sayers.

11. PwC East Caribbean did not perform any work, or attend any meetings, in Ontario in connection with the engagements. Further, PwC East Caribbean never submitted to the jurisdiction of the Ontario courts, nor did it agree that any issues would be governed or interpreted in accordance with the laws of the Province of Ontario.

12. In accordance with the standard practice of PwC East Caribbean, Kingsland agreed that the audit engagements would be governed by the law of Barbados and that the Courts

of Barbados would have exclusive jurisdiction to settle any claim, difference or dispute (including without limitation claims for set off or counterclaims) which might arise out of, or in connection with, the engagement. The Engagement Letter specifically provides:

Governing Law

This Agreement shall be governed and construed in accordance with the Laws of Barbados, and shall be deemed in all respect to be a Barbados contract. Parties hereby agree to the exclusive jurisdiction of the courts of Barbados with respect to all matters arising under or by virtue of this Agreement.

C. The Allegations in the Statement of Claim

13. Aside from naming PwC East Caribbean as a defendant, the statement of claim does not refer to the audits or to PwC East Caribbean in particular. As managing partner of PwC East Caribbean, I can attest to the fact that neither Kingsland, nor any of its officers or directors, raised any concerns with respect to the audits. PwC East Caribbean was certainly not party to any conspiracy and denies having been involved in any wrongdoing, either as alleged or at all.

14. Further, I have never heard of the plaintiff, Nelson Barbados Group Ltd., and I am not aware of it carrying on business, or having any dealings, in Barbados. I have made inquiries of Mr. Atkinson and Mr. Sayers with respect to their knowledge of Nelson Barbados Group Ltd. and neither of those individuals has any knowledge of the company.

D. Location of Audit Staff/Files

15. All of the PwC East Caribbean audit staff, namely, Philip Atkinson, Stephen Sayers, and Bernadette Austin, reside in Barbados.

16. All of the audit files and working papers of PwC East Caribbean are in Barbados. They are located at our offices at The Financial Services Centre, Bishop's Court Hill, P.O. Box 111, St. Michael, Barbados.

E. Lands and Assets of Kingsland

17. I am informed by Mr. Atkinson, and believe, that the lands of Kingsland, and all of the company's assets, are in Barbados. I am further informed, and believe, that the vast majority of the other defendants or persons or entities are in Barbados.

F. Summary

18. Having regard to the issues in this case, and the location of the witnesses and documents required to address them, a trial in Ontario would involve considerable expense and inconvenience to PwC East Caribbean.

SWORN TO by the deponents the said
MARCUS A. HATCH
in the City of Bridgetown, Barbados
this 18th day of May, 2007

Before me:

)
)
)
)
)
)
)

Marcus A. Hatch

~~ASSISTANT REGISTRAR & AS
SUCH A NOTARY PUBLIC IN
AND FOR BARBADOS~~

This affidavit is filed on behalf of PricewaterhouseCoopers East Caribbean Firm by Marcus A. Hatch



October 1, 2005

The Board of Directors
Kingsland Estates Limited
c/o Mr. E.A.B. Deane
Egerton
St. George

This is Exhibit A referred to in the
affidavit of Marcus A. Hatch
sworn before me, this 15th
day of May 2007

ACCOMMISSIONER FOR TAKING AFFIDAVITS

PricewaterhouseCoopers
The Financial Services Centre
Bishop's Court Hill
P.O. Box 111
St Michael
Barbados, W.I.
Telephone (246) 436-7000
Facsimile (246) 436 1475

Subject: Engagement Letter – Audits for the years June 30, 1998 to June 30, 2005

Dear Sirs

Thank you for re-appointing PricewaterhouseCoopers as your auditors for the years ended June 30, 1998 to June 30, 2005. The purpose of this letter is to confirm our mutual understanding of the terms of our engagement.

Our Responsibilities

We will audit the balance sheets at June 30, 1998 to June 30, 2005 and the related statements of income, retained earnings and cash flows for the years then ended. Upon completion of our audits, we will provide you with our audit reports on those financial statements.

We will be responsible for performing the audits in accordance with international auditing standards. These standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. The audits will include examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation.

Engagement Team Leaders

The engagement will be led by:

- Philip Atkinson, engagement leader, who will be responsible for assuring the overall quality, value, and timeliness of our services to you; and
- Stephen Sayers, team manager, who will be responsible for managing the delivery of our services to you.

This team will have access to a full range of specialists to assist as necessary.

Anguilla Charles W A Walwyn Robert J Wilkinson
Barbados J Andrew Maryshaw Philip St E Atkinson R Michael Bynoe Ashley R. Clarke Lorna R. Edwards Wayne I. Field
Marcus A. Franklin Marcus A. March Stephen A. Jardine Lindell E. Nurse Brian D. Robinson
Christopher S. Santolucito R. Charles D. Tibbitts Ann M. Wallace H. Luck Michelle J. White-Yong
Grenada Philip D. C. Atkinson (resident in Barbados)
St. Lucia Anthony D. Atkinson Richard N. C. Poterkin



**Board of Directors
Kingsland Estates Limited**

October 1, 2005

Terms and Conditions Supporting Fee

We estimate that our fees for the audits of the company's financial statements for the years ended June 30, 1998 to June 30, 2005 will be Bds\$40,000.00. However should we be required to perform accounting work to complete the financial statements, this will be billed separately. As you are aware, there are several legal matters pending which could result in significant additional time and costs being incurred. In this event, this also will be billed separately. However, we will not commence any work until you give initial approval. Any fee estimates by PricewaterhouseCoopers take into account the agreed-upon level of preparation and assistance from the company's personnel. PricewaterhouseCoopers undertakes to advise the company's management on a timely basis should this preparation and assistance not be provided or should any other circumstances arise which cause actual time to exceed that estimate.

PricewaterhouseCoopers will bill the company for VAT and out-of-pocket expenses including travel, telephone, facsimile transmission, postage, photocopying and similar expenses.

If for any reason the company is unable to provide such schedules, information and help, PricewaterhouseCoopers and the company will mutually revise the fee to reflect additional services, if any, required of us to achieve these objectives.

In providing our services, we will consult with the company about matters of accounting, financial reporting or other significant business issues. Accordingly, our fee reflects the time necessary for a reasonable amount of such consultation. However, should a matter require research, consultation or audit work beyond that amount, PricewaterhouseCoopers and the company will agree to an appropriate revision in services and fees.

Invoices are due and payable upon receipt. 50% of our fees will be billed on commencement of the audit with the balance being billed and collectible once the signed audited accounts have been completed. Interest may be charged on the balance of any accounts remaining unpaid for more than 30 days at a monthly rate of 1.5%.

Internal Control and Limitations of the Auditing Process

We will consider the company's internal control over financial reporting solely for the purpose of determining the nature, timing and extent of auditing procedures necessary for expressing our opinion on the financial statements. This consideration will not be sufficient to enable us to render an opinion on the effectiveness of internal control over financial reporting.

Board of Directors
Kingsland Estates Limited

October 1, 2005

However, we will inform the appropriate level of management of any significant weaknesses in internal control that come to our attention.

We will design our audits to provide reasonable, but not absolute, assurance of detecting errors or fraud that would have a material effect on the financial statements as well as illegal acts having a direct and material effect on the financial statements.

It is important to recognize that there are limitations in the auditing process. Audits are based on the concept of selective testing of the data underlying the financial statements and are, therefore, subject to the limitation that material misstatements arising from the consequences of errors or fraud, or illegal acts, if any exist, may not be detected. Because of the nature of fraud, including attempts at concealment through collusion and forgery, an audit designed and executed in accordance with International Standards on Auditing may not detect a material fraud. Further, while effective internal control reduces the likelihood that errors, fraud or illegal acts will occur and remain undetected, it does not eliminate that possibility. For these reasons we cannot guarantee that errors, fraud or illegal acts, if present, will be detected. However, we will inform the appropriate level of management of any material errors that come to our attention and any fraud or illegal acts that come to our attention, unless they are clearly inconsequential.

Management's Responsibilities

The financial statements referred to above are the responsibility of management. In this regard, management is responsible for ensuring that transactions are properly recorded in the accounting records and maintaining internal control sufficient to permit the preparation of financial statements in conformity with International Financial Reporting Standards.

We expect that the financial statements will be adjusted to correct all non-trivial errors coming to our attention, whether or not they are material.

Management is also responsible for making available to us, upon request, all of the original accounting records and related information, and personnel to whom we may direct inquiries. As required by International Standards on Auditing, we will make specific inquiries of management and others about the representations embodied in the financial statements and the effectiveness of internal control over financial reporting. International Standards on Auditing also require that we obtain a representation letter covering the financial statements from certain members of management. The results of our audit tests, the responses to our inquiries



**Board of Directors
Kingsland Estates Limited**

October 1, 2005

and the written representations comprise the evidential matter we intend to rely upon in forming our opinion on the financial statements.

Representation from Management

As noted above, at the conclusion of the engagement, the company's management will provide to us a representation letter that, among other things, will confirm:

- management's responsibility for the preparation of the financial statements in accordance with International Financial Reporting Standards;
- the completeness and accuracy of financial records and related data;
- the completeness and availability of all minutes of the Board and committee meetings; and
- to the best of their knowledge and belief, the absence of illegal acts, fraud and other irregularities involving management or those employees who have significant roles in the control structure.

Publication/Reproduction of Financial Statements

If the company's management intends to publish or reproduce, in printed form or electronically (e.g., on an Internet Web Site), the financial statements together with our report (or otherwise make reference to our firm) in a document that contains other information, management agrees to (a) provide us with a draft of such document to read, and (b) obtain our approval for inclusion of our report, before the document is finalized and distributed. Where our audit report is reproduced in any medium, the complete financial statements, including notes, must also be presented.

Communications

At the end of the engagement, we will provide management and the audit committee or others so designated with our recommendations designed to help make improvements in the company's internal control structure and operation. This communication will be in a mutually agreeable format and will include any other significant matters that may come to our attention (see "Internal Control and Limitations on the Auditing Process" above).



**Board of Directors
Kingsland Estates Limited**

October 1, 2005

As part of this engagement we will communicate certain additional matters to the appropriate members of management and the audit committee or others with equivalent authority. Such matters include:

- the initial selection of and changes in significant accounting policies and their application;
- the process used by management in formulating particularly sensitive accounting estimates and the basis for our conclusions regarding the reasonableness of those estimates;
- audit adjustments that could, in our judgement, either individually or in total, have a significant effect on your financial reporting process;
- any disagreements with management, whether or not satisfactorily resolved, about matters that individually or in total could be significant to the financial statements or our report; and
- any serious difficulties that we encountered in dealing with management in the performance of the audit.

Indemnification for Management Misrepresentations

The company hereby agrees to release and indemnify PricewaterhouseCoopers and its partners and employees, and holds them harmless from all claims, liabilities, losses and costs arising in circumstances where there has been a knowing misrepresentation by a member of the company's management, regardless of whether such person was acting in the company's interest. This release and indemnification will survive termination of this engagement letter. This release and indemnification will not operate where PricewaterhouseCoopers ought to have uncovered such knowing misrepresentation but failed to, due to the negligence or willful misconduct or dishonesty of PricewaterhouseCoopers, its partners and/or employees.

Limitation of Liability

In any action, claim, loss or damage arising out of the engagement, the company agrees that PricewaterhouseCoopers' liability will be several, and not joint and several, and the company may only claim payment from PricewaterhouseCoopers of PricewaterhouseCoopers' proportional share of the total liability based on degree of fault.

Board of Directors
Kingsland Estates Limited

October 1, 2005

Working Papers

All working papers and files, other materials, reports and work created, developed or performed by PricewaterhouseCoopers during the course of the audit are the property of PricewaterhouseCoopers.

Governing Law

This Agreement shall be governed and construed in accordance with the Laws of Barbados, and shall be deemed in all respects to be a Barbados contract. Parties hereby agree to the exclusive jurisdiction of the courts of Barbados with respect to all matters arising under or by virtue of this Agreement.

Timely Performance

PricewaterhouseCoopers will use all reasonable efforts to complete within any agreed upon time frame the performance of the services described in this engagement letter. However, PricewaterhouseCoopers shall not be liable for failures or delays in performance that arise from causes beyond its control, including the untimely performance by the company of its obligations as set out above under the headings "Terms and Conditions Supporting Fee and Management's Responsibilities".

Right to Terminate Services

Should the company not fulfill its obligations toward PricewaterhouseCoopers under the agreement, particularly those set out under the headings "Terms and Conditions Supporting Fee and Management's Responsibilities", PricewaterhouseCoopers may, without prejudice to its other rights and resources cease providing its services hereunder and consider the present agreement terminated. In such case, PricewaterhouseCoopers will not be responsible for any loss, costs, expenses or damages resulting from such termination.

Taxation Services

In addition to auditing and accounting services, we frequently offer taxation advice and assistance to our clients. You will appreciate that tax planning and advice of even the highest standard is based on interpretation of the law and experience with the taxation authorities. Therefore, the conclusions reached and views expressed are often matters of opinion rather than of certainty.



Board of Directors
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October 1, 2005

Quality Assurance

If you have questions or concerns about our services, you may contact Mr. Andrew Marryshow, Senior Partner, of our firm.

Other Matters

Any additional services that you may request and we agree to provide will be the subject of separate written arrangements.

We are proud to serve as your auditors and we appreciate your confidence in our work. If the services outlined herein are in accordance with your requirements and if the above terms are acceptable to you, please have one copy of this letter signed in the space provided below and returned to us.

Yours faithfully,

Chartered Accountants

KINGSLAND ESTATES LIMITED


E. A. M. DEANE
CHAIRMAN / DIRECTOR

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

RICHARD IVAN COX ET AL.

Defendants

Court File No. 07-0141

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Barrie

**AFFIDAVIT OF MARCUS A. HATCH
Sworn May 18, 2007**

FASKEN MARTINEAU DuMOULIN LLP
Barristers & Solicitors
Toronto Dominion Bank Tower
P.O. Box 20
Toronto-Dominion Centre
Toronto, Ontario
M5K 1N6

Gerald L.R. Ranking [LSUC#23855J]
Phone: 416 865 4419
Fax: 416 364 7813
Solicitors for the Defendant,
PricewaterhouseCoopers East Caribbean Firm

NELSON BARBADOS GROUP LTD.

Plaintiff

- and - **RICHARD IVAN COX ET AL.**

Defendants

Court File No. 07-0141

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MOTION RECORD

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