

NO. 01-24-00292-CV

IN THE COURT OF APPEALS
FOR THE FIRST DISTRICT OF TEXAS
HOUSTON, TEXAS

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HOUSTON, TEXAS

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DEBORAH M. YOUNG
Clerk of the Court

**DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE IN
TRUST FOR THE REGISTERED HOLDERS OF MORGAN STANLEY
ABS CAPITAL 1 INC. TRUST 2005-WMCI, MORTGAGE PASS –
THROUGH CERTIFICATES,
SERIES 2005 – WMCI
Appellant,**

v.

**CHARLOTTE GONZALEZ, AS DEPENDENT ADMINISTRATOR,
Appellee,**

On Appeal from Probate Court No. 1
Harris County, Texas
Trial Court No. 498670

APPELLANT’S BRIEF

Johnetta Lang Texas Bar No. 24036943
Ronny George Texas Bar No. 24123104
Grant Tabor Texas Bar No. 24027905
LOGS Legal Group
13105 Northwest Freeway Suite 960
Houston, Texas 77040
TXAttorneys@logs.com
Telephone (713) 462-2565
Fax (847) 879-4854

Oral Argument Requested

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Identity of Parties and Counsel

Appellant: Deutsche Bank National Trust Company, As Trustee In Trust for the Registered Holders of Morgan Stanley ABS Capital 1 Inc. Trust 2005-WMCI, Mortgage Pass – Through Certificates, Series 2005 – WMCI

Appellant’s Counsel: Johnetta Lang
Texas Bar No. 24036943
LOGS Legal Group
13105 Northwest Freeway Suite 960
Houston, Texas 77040
TXAttorneys@logs.com
Telephone (713) 462-2565
Fax (847) 879-4854

Ronny George
Texas Bar No. 24123104
LOGS Legal Group
13105 Northwest Freeway Suite 960
Houston, Texas 77040
TXAttorneys@logs.com
Telephone (713) 462-2565
Fax (847) 879-4854

Grant Tabor
Texas Bar No. 24027905
LOGS Legal Group
13105 Northwest Freeway Suite 960
Houston, Texas 77040
TXAttorneys@logs.com
Telephone (713) 462-2565
Fax (847) 879-4854

H. Gray Burks IV
Texas Bar No. 03418320
LOGS Legal Group
13105 Northwest Freeway Suite 960
Houston, Texas 77040

TXAttorneys@logs.com
Telephone (713) 462-2565
Fax (847) 879-4854

Renee Casas
Texas Bar No. 24107728
LOGS Legal Group
13105 Northwest Freeway Suite 960
Houston, Texas 77040
TXAttorneys@logs.com
Telephone (713) 462-2565
Fax (847) 879-4854

Appellee: Charlotte Gonzalez

Appellee's Counsel: Brian D. Roman
State Bar No. 24037386
McGuire & Roman, PLLC
18726 Duke Lake Drive
Spring, Texas 77388
Telephone (832) 605-5914
roman@mcguireroman.net

Appellee's probate court counsel:
D. Paul Fairfield
State Bar No. 24036545
The Fairfield Law Firm
1610 Green Meadows
Pasadena, Texas 77505
Telephone: (281) 487-1645
paul@fairfield-legal.com

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Statement of the Case

This case involves the probate court granting the Dependent Administrator's Motion to Discharge Lien On 13314 Knoll Crest Street, Houston, Texas 77015 ("Motion") that alleges to divest plaintiff, a secured creditor, of its interest in real property without proper notice to plaintiff. On December 7, 2023, the dependent administrator filed the Motion and a setting notice scheduled for January 4, 2024. The Motion was served under Texas Rules of Civil Procedure 21a to the plaintiff's designated counsel who was no longer employed at the plaintiff's firm. On January 12, 2024, the probate court signed an Order On Dependent Administrator's Motion to Discharge Lien Order On 13314 Knoll Crest Street, Houston, Texas 77015 ("Order") granting the dependent administrator's Motion by default. There is no record that the plaintiff was served notice of the Order.

Statement Regarding Oral Argument

Oral argument may assist the Court in better understanding the nature of the process to divesting a secured creditor of its real property interest within a probate dependent administration.

Issues Presented

This appeal concerns the process to divest a secured creditor of its property interest within a probate dependent administration.

Whether an administrator in a probate dependent administration is violating due process by attempting to divest a secured creditor of its real property interest by filing a motion in the dependent administrations instead of seeking a suit for quiet title?

Whether the claims process in a dependent administration may be used to divest a home equity lienholder of its interest in the property, or whether a declaratory judgment action must be filed?

Whether email notice to counsel of a motion in probate court is sufficient notice to satisfy due process or whether service of citation on the registered agent is needed?

Statement of Facts

1. On April 11, 2023, the dependent administrator of the Estate of Reyes Gonzalez Jr. (“Estate”), Charlotte Gonzalez (“Gonzalez”) obtained an order approving an application to sell real property commonly known as 13314 Knollcrest Street, Houston, Texas 77015 (“Property”). (**See Court Clerk’s Record Order Approving Application for Sale of Real Property signed on April 11, 2023**). On May 4, 2023, secured creditor, Deutsche Bank (“Deutsche”) filed Claimant’s Authenticated Secured Claim in the amount of \$88,934.66 as of April 21, 2023. The claim includes an election under Texas Estates Code § 355.151(a)(2) to be allowed, approved, and fixed as a secured debt against the Property. On May 26, 2023, Gonzalez filed a rejection of Deutsche’s entire claim, without explanation or reason, despite the language of Estate Code Section 355.151. (**See Court Clerk’s Record Administrator’s Action on Claim of Deutsche Bank National Trust Company, As Trustee on Behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc., Trust 2005-WMCI Mortgage Pass-Through Certificates, Series 2005 WMC1 filed on May 26, 2023.**)

2. On June 9, 2023, Deutsche filed its “Plaintiff’s Original Petition to Enforce Claim” in the exact form. On August 29, 2023, it was eventually accepted by the court clerk after twelve ProDoc e-filing submissions, rejections and returns and several troubleshooting conferences with the clerk. (**See Court Clerk’s Record**

Motion to Vacate Order Discharging Lien Exhibit 2 Declaration of Katie Costa filed on March 13, 2024.)

3. Building on her claim rejection, Gonzalez filed an original answer combined with a motion to dismiss the petition, solely on grounds that Deutsche failed to commence suit on its claim until five (5) days after the statutory 90th day from the date that Gonzalez rejected the claim. **(See Court Clerk’s Record Defendant’s Original Answer and Motion to Dismiss filed on October 4, 2023).** Deutsche failed to receive notice of the original answer and motion to dismiss when filed. **(See Court Clerk’s Record Motion to Vacate Order Discharging Lien Exhibits 1, 2 and 3 filed on March 13, 2024.)** On October 26, 2023, the probate court entered an order dismissing Deutsche’s claim by default. **(See Court Clerk’s Record Order on Defendant’s Motion to Dismiss filed on October 26 2023.)**

4. Building on the claim rejection and the order dismissing Deutsche’s claim against the Estate, Gonzalez filed a motion to discharge Deutsche’s lien asserting that the lien is invalid and unenforceable. **(See Court Clerk’s Record Motion to Discharge Lien Against Estate Property filed on December 7, 2023.)** Gonzalez’s sole grounds for the motion to discharge lien was her rejection of Deutsche’s claim and Deutsche’s dismissed Petition to Enforce Claim. Gonzalez’s proposed order purportedly “discharging and removing” Deutsche’s lien and authorizing a sale “free and claim of and unencumbered by” the lien was entered by

default on January 12, 2024. Deutsche failed to receive notice that the probate court granted the Dependent Administrator's Motion to Discharge Lien on 13314 Knoll Crest Street, Houston, Texas 77015 and granting Gonzalez's motion to discharge lien. **(See Court Clerk's Record Motion to Vacate Order Discharging Lien Exhibits 1, 2 and 3 filed on March 13, 2024.)**

5. Gonzalez, in her capacity as dependent administrator for the Estate, attempted to sell the property without paying off Deutsche's lien, but the title examiner would not issue title based on an order discharging lien entered in the Estate probate administration. On January 30, 2024, the title examiner concluded that disallowing the claim against the Estate and discharging the lien against the Estate is not a substitute for filing a suit to quiet title to void the lien as to the Property. **(See Motion to Hire Trial Counsel Exhibit B filed on February 6, 2024.)** However, Gonzalez's position is that her three-step short-cut effectively has quieted title and voided Deutsche's lien on the Property. **(See Clerk's Record Motion to Hire Trial Counsel, Paragraph 7 & Exhibit B filed on February 6, 2024.)**

Summary of Argument

Deutsche was entitled to due process in any action that attempted to divest it of its property interest. Gonzalez's attempts to divest Deutsche of its property interest constitute error because Gonzalez failed to utilize the proper procedure that includes filing a declaratory judgment with service of process providing proper notice that Gonzalez was seeking to remove Deutsche's lien. Although Gonzalez attempted to serve Deutsche with notice of motions under Texas Rule of Civil Procedure § 21a, Deutsche failed to timely receive notice. Since Deutsche failed to receive proper notice of Gonzalez's attempt to divest Deutsche of its interest in property, the Court should reverse the order discharging lien and order dismissing Deutsche's claim.

Standard of Review

Most decisions by the probate court are reviewed for an abuse of discretion. When applying an abuse-of-discretion standard, the normal sufficiency-of-the-evidence review is part of the abuse-of-discretion review and not an independent ground for reversal. The probate court abuses its discretion if its actions are unreasonable or arbitrary or without reference to any guiding rules or principles. Under an abuse of discretion standard of review, an appellate court is required to make independent review of the entire record to conclude if the trial court abused its discretion and are not limited to reviewing the sufficiency of the evidence to support the findings of fact made. "When applying an abuse-of-discretion standard, the normal sufficiency-of-the evidence review is part of the abuse-of-discretion review and not an independent ground for reversal." *In re Estate of Johnson*, No. 02-20-00133-CV, 2021 Tex. App. LEXIS 7138, 2021 WL 3796019, at *5 (Tex. App.—Fort Worth Aug. 26, 2021, no pet.) (mem. op.).

Argument

I. Vacating the Order Due to Lack of Due Process – No Service of Citation.

1. Gonzalez acted against Deutsche's interest in the property. The exclusive remedy to resolve property interest disputes is a trespass to try title. *Lile v. Smith*, 291 S.W.3d 75, 77 (Tex. App.—Texarkana 2009, no pet.). A suit to quiet title is an equity and seeks to remove a cloud of title. *Ford v Exxon Mobil Chem. Co.* 235 S.W.3d 615, 618 (Tex. 2007). The Uniform Declaratory Judgment Act states the following:

‘a person interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.’ Tex. Civ. Prac. & Rem. Code Ann. § 37.004(a).

2. Deutsche received a security interest in the property. To obtain a loan, Reyes Gonzalez, Jr. (“Decedent”), deceased, and Gonzalez, executed a Texas Home Equity Security Instrument which transferred rights in the Property, specifically: “Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described Property ... 13314 Knoll Crest Street, Houston, Texas 77015.” (**Motion to Vacate Default Order on Dependent Administrator’s Motion to Discharge Lien Exhibit 4 Claimant’s Authenticated Secured Claim Exhibit B Paragraph**

Q filed on March 13, 2024.) As a matter of law, the mortgagor [Borrower] retains the legal title, and the mortgagee [Lender] holds the equitable title. *Flag-Redfern Oil Co. v. Humble Exploration Co., Inc.*, 744 S.W. 2d 6, 8 (Tex. 1997) (lien theory of mortgages).

3. Gonzalez sought to divest Deutsche of its property interest by filing the motion to discharge lien and motion to dismiss Deutsche's claim. Gonzalez's intent was not only to disallow a secured claim against the Estate, but also to quiet title and void Deutsche's lien. **(See Court Clerk's Records Dependent Administrator's Motion to Hire Trial Counsel, filed on February 6, 2024, Paragraph 7 and Motion to Vacate Default Order on Dependent Administrator's Motion to Discharge Lien Exhibit 5 Demand Letter filed on March 13, 2024.)** After the probate court granted Gonzalez's motion to discharge lien and motion to dismiss, Gonzalez sought clarification from a title examiner. Gonzalez received notice from the title examiner that disallowing the claim against the Estate and discharging the lien against the Estate is not a substitute for filing a suit to quiet title to void the lien as to the Property. According to the Gonzalez, the title examiner stated:

“It [the order] discharges the lien from the estate not the lien. In other words, the estate doesn't have to pay the debt but they can't sell the house because of the liens. I've already sent it to our Underwriting Counsels and they agree. You will need to payoff the loan or file a suit for quiet title to remove the lien.” **(See Motion to Hire Trial Counsel Exhibit B filed on February 6, 2024.)**

4. Gonzalez's procedure purported to divest Deutsche's property right without due process. Deutsche is not even named as a party defendant in the Estate probate administration. The title examiner's response is consistent with case law and statutory authority on this issue. An ancillary matter in the Estate probate administration or a separate suit in the district court to quiet title with service of process on Deutsche's registered agent is a prerequisite to even attempt discharging Deutsche's lien.

5. "It is the plaintiff's duty to see that service is properly accomplished. If the plaintiff did nothing to fix the defective service, then there is error on the face of the record and the default judgment must be set aside." *Alamo Home Fin. v. Duran*, 2015 Tex. App. LEXIS 7292, 215 WL 4381091 (Tex. Civ. App. – Corpus Christi, July 16, 2015, no pet.) (no service of citation on the party's registered agent). Since Gonzalez's failure to use the proper procedure to divest Deutsche of its property interest by filing a declaratory judgment action to quiet title for service of process, the order discharging the lien and dismissing the claim should be vacated.

II. Vacating Order Due to No Notice of an Appealable Order.

6. The probate court granted Gonzalez's motion to discharge lien by signing Dependent Administrator's Motion to Discharge Lien on 13314 Knoll Crest Street, Houston, Texas 77015 on January 12, 2024.

7. A clerk is required to give the parties notice that the court has signed a judgment or appealable order. See Tex.R.Civ.P. 306a.3. “A probate proceeding consists of ‘a continuing series of events,’ and later decisions regarding administration of an estate or guardianship of a ward necessarily may be based on either decision in the proceeding.” *In re Guardianship of Macer*, 558 S.W. 3d 222, 226 (Tex. Civ. App. – Houston [14th Dist.], 2018, no pet.). “If no express statute controls, a probate court order is final and appealable only if it ‘dispose[s] of all parties or issues in a particular phase of the proceedings.” *Macer* at 227.

“But the fact that the April 1, 2016 order – which is otherwise an interlocutory order – is considered final for purposes of appeal does not deprive the probate court of plenary power over the entire proceeding, including the court’s prior rulings.”

Macer at 231.

“Although an interlocutory order issued in a probate proceeding may be sufficiently final to permit appellate review under *De Ayala*, the interlocutory order remains just that – interlocutory.”

In re Harris, 2021 Tex. App. LEXIS 1632, *11 (Tex. Civ. App. – Fort Worth, 2021, no pet.).

8. A default order is an order entered without any response by the party against whom relief is sought. In the probate court, not only was there no response, no petition filed, no service of citation issued on Deutsche, there was also no notice of an appealable order. Since the order discharging the lien was entered using the motion practice procedure, the clerk of the court failed to issue a letter noticing entry

of a final appealable order. Therefore, Deutsche failed to receive notice that Gonzalez divested it of its property rights contrary to due process requirements.

III. Vacating Order because Rejecting the Claim violated Statutory Authority.

9. Deutsche's claim was filed under Texas Estate Code §355.151(a)(2) for the claim to be allowed, approved, and fixed as a preferred debt and lien against the specific property securing the indebtedness and paid according to the terms of the contact that secured the lien. In this circumstance, "the claim **shall be so allowed and approved** if it is a valid lien." Texas Estates Code § 355.151(a)(2) (emphasis added). The substantive validity of the lien could be challenged, for example in an ancillary proceeding to quiet title. The lien cannot be disallowed in the claims process. *Id.* The claimant is required to forego making further claims against other assets of the estate (in personam) but is entitled to enforce its lien against the property (in rem). *Id.* Accordingly, Deutsche's equitable ownership interest in the Property by virtue of its mortgage lien cannot be voided against the Property by barring the claim under Section 355.064(a). *Wyatt v. Morse*, 102 S.W. 2d 396 (Tex. 1937).

IV. Vacating the Order Because the Claims Process Has No Effect on the Validity of the Home Equity Security Instrument.

10. "The probate code provides that all claims for money must be presented to the representative of an estate. Only claims for money need be presented to the probate court before initiation of a suit on the claim ... Claims for unliquidated amounts, injunctive relief, or for title or possession of property need not be presented to the

administrator before filing a suit for those claims.” *Walton v. First Nat’l Bank*, 956 S.W. 2d 647, 651 (Tex. Civ. App. – Texarkana 1997, no pet); *accord Lusk v. Mintz*, 625 S.W. 2d 774, 776 (Tex. Civ. App. – Houston [14th Dist.] 1981, no pet.).

“While a creditor must bring suit on a money claim within 90 days after its rejection or otherwise have it barred, the rule is inapplicable to a claim that was not required to be presented in first instance. *No consequence attaches to failure to promptly institute suit on a rejected claim that was unnecessarily presented.*” (emphasis added).

Lusk v. Mintz, 625 S.W. 2d at 776; *accord Walton v. First Nat’l Bank*, 956 S.W. 2d at 652. *Andrews v. Aldine Indep. School Dist.*, 116 S.W. 3d 407, 411 (Tex. Civ. App. – Houston [14th Dist.] 2003, no pet.).

11. But the tax lien in *Andrews* arose from a statutory lien imposed on property to collect and enforce a money claim for taxes against the property owner. Texas Tax Code § 32.01. There is no conveyance of a property interest by the property owner to the taxing entity. This is a money claim enforceable against property by virtue of a Texas statute. Even *Andrews* court distinguishes a property tax lien from a conveyance in the property. *Andrews v. Aldine Indep. School Dist.*, 116 S.W. 3d at 411 (distinguishing a tax lien from a vendor’s lien for invoking the 90-day limitations period). “[i]n those cases, the creditor was asserting a vendors lien, and thus had a superior claim to title”. It cannot be argued that the property did not come into the probate estate subject to the conveyance in the Texas home equity lien as a superior right subject to the conditions in the security instrument.

12. Decedent and Gonzalez executed a Texas Home Equity Security Instrument together with a Texas Home Equity Affidavit and Agreement (First Lien). (See all loan documents attached to Deutsche Bank’s authenticated secured claim filed May 4, 2023). In these documents, Decedent and Gonzalez transferred a right in their property as follows: “**TRANSFER OF RIGHTS IN THE PROPERTY** ... For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described Property located in the County of Harris ... which currently has the address of 13314 KNOLL CREST STREET, HOUSTON, Texas 77015.” (See **Court Clerk’s Record Claimant’s Authenticated Secured Claim, Exhibit B, filed May 4, 2023**). This claim can only be in the property, because under Texas law, a home equity loan “is without recourse for personal liability against each owner and the spouse of each owner” Texas Constitution Art. XVI, Sec. 50(a)(6)(C). Deutsche cannot have a claim for money against the Estate. Rather, Deutsche has an interest in the Property conveyed by the Gonzalez for the purpose of obtaining money, which is not subject to the claims process and on which the claims process can have no effect regarding the lien.

13. Gonzalez has committed a series of errors and short cuts, which have resulted in erroneous orders being entered by default by the probate court. Texas jurisprudence favors resolution of disputes on the merits, not by default, not without

service of citation when property rights are being taken, and not by denying a party the opportunity to present meritorious defenses.

WHEREFORE, PREMISES CONSIDERED, Deutsche Bank National Trust Company, as Trustee, in trust for the registered holders of Morgan Stanley ABS Capital I Inc. Trust 2005-WMC1, Mortgage Pass-Through Certificates, Series 2005-WMC1 respectfully prays that this Court:

A. Reverse the order of the probate court discharging the lien and render judgment that Deutsche Bank National Trust Company, as Trustee, in trust for the registered holders of Morgan Stanley ABS Capital I Inc. Trust 2005-WMC1, Mortgage Pass-Through Certificates, Series 2005-WMC1's lien remains in full force and effect such that Deutsche Bank National Trust Company, as Trustee, in trust for the registered holders of Morgan Stanley ABS Capital I Inc. Trust 2005-WMC1, Mortgage Pass-Through Certificates, Series 2005-WMC1 may exercise all its contractual rights and lien in rem pending a disposition of any appropriate declaratory judgment action.

B. Reverse the order of the probate court dismissing the petition to enforce claim and render judgment that the claim is allowed for the purpose of in rem recovery.

C. Alternatively, that this Court reverse the orders of the probate court dismissing the petition to enforce claim and discharging the lien and remanding to the probate court for further proceedings consistent with this Court's opinion.

D. Grant Deutsche Bank National Trust Company, as Trustee, in trust for the registered holders of Morgan Stanley ABS Capital I Inc. Trust 2005-WMC1, Mortgage Pass-Through Certificates, Series 2005-WMC1 and its mortgage servicer, Select Portfolio Servicing, Inc., such other and further relief in equity or at law to which it may show itself justly entitled.

Respectfully Submitted,

/s/ Johnetta Lang _____.

Johnetta Lang State Bar No. 24036943

Email: jlang@logs.com

Ronny George State Bar No. 24123104

Email: rgeorge@logs.com

Grant Tabor State Bar No. 24027905

Email: gtabor@logs.com

LOGS Legal Group LLP

13105 Northwest Freeway, Suite 960

Houston, TX 77040

Telephone: (224) 244-1367

Facsimile: (847) 879-4854

*Attorneys for Deutsche Bank National Trust
Company, as Trustee, in trust for the
registered holders of Morgan Stanley ABS
Capital I Inc. Trust 2005-WMC1, Mortgage
Pass-Through Certificates, Series 2005-
WMC1*

20-036390

CERTIFICATE OF SERVICE

The undersigned certifies that on the 29th day of May2024, a true and correct copy of the foregoing Appellant Brief along was served upon the following parties via electronic delivery or by deposit in the United States Mail as listed below:

Paul D. Fairfield
The Fairfield Law Firm
1610 Green Meadows
Pasadena, Texas 77505
Telephone: (281) 487-1645
Via email: paul@fairfield-legal.com
Attorney for Probate Administrator, Charlotte Gonzalez

Brian D. Roman
State Bar No. 24037386
McGuire & Roman, PLLC
18726 Duke Lake Drive
Spring, Texas 77388
Telephone (832) 605-5914
Via email: roman@mcguireroman.net
Litigation Attorney for Probate Administrator, Charlotte Gonzalez

/s/ Johnetta Lang
Johnetta Lang

Certificate of Compliance

This brief complies with the Texas Rules of Appellate Procedure 9.4 because the sections covered by the rule contain no more than 4500 words. The font used in the body of the brief is no smaller than 14 points, and there are no footnotes.

/s/ Johnetta Lang
Johnetta Lang

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Emily Humphreys on behalf of Johnetta Lang
Bar No. 24036943
ehumphreys@LOGS.com
Envelope ID: 88239201
Filing Code Description: Brief Requesting Oral Argument
Filing Description: Brief Requesting Oral Argument
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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Brian Dean Roman	24037386	roman@mcguireroman.net	5/29/2024 6:57:41 PM	SENT
Doston Paul Fairfield	24036545	paul@fairfield-legal.com	5/29/2024 6:57:41 PM	SENT
Deborah Marie Young	794894	Deborah.Young@txcourts.gov	5/29/2024 6:57:41 PM	SENT
Katie Costa		kcosta@logs.com	5/29/2024 6:57:41 PM	SENT
Ronny George		rgeorge@logs.com	5/29/2024 6:57:41 PM	SENT
Emily Humphreys		ehumphreys@LOGS.com	5/29/2024 6:57:41 PM	SENT
Johnetta GrayLang		jlang@logs.com	5/29/2024 6:57:41 PM	SENT