Electronically Filed
7/31/2017 4:23 PM
Steven D. Grierson
CLERK OF THE COURT

J. CHARLES COONS, ESQ.
Nevada Bar No. 10553
Charles@coopercoons.com
THOMAS MISKEY, ESQ.
Nevada Bar No. 13540
Thomas@coopercoons.com
COOPER COONS, LTD.
10655 Park Run Drive, Suite 130
Las Vegas, Nevada 89144
(702) 998-1500
Attorneys for Plaintiff

Electronically Filed
Aug 10 2017 10:33 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

DISTRICT COURT

CLARK COUNTY, NEVADA

RLP-BRIER CREEK, LLC, a Nevada series limited liability company of the container RED LIZARD PRODUCTIONS, LLC under NRS § 86.296,

Plaintiff,

v.

GREEN TREE SERVICING, LLC, a Delaware limited liability corporation; NATIONAL DEFAULT SERVICING CORPORATION, an Arizona corporation; SILVERSTONE RANCH COMMUNITY ASSOCIATION, a Nevada domestic non-profit coop corporation; LAS VEGAS CITY, an unincorporated city, BAKEMARK WEST, LLC, a foreign limited liability corporation; REPUBLIC SERVICES, INC., a Delaware corporation; JEREMY J. STERLING, an individual; DOES I through X; and ROE CORPORATIONS I through X, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-14-694084-C

Dept. No.: XXXI

NOTICE OF APPEAL

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Docket 73668 Document 2017-26734

Case Number: A-14-694084-C

NOTICE IS HEREBY GIVEN that Plaintiff RLP-BRIER CREEK, LLC appeals to the Supreme Court of Nevada from the District Court's Finding of Facts Conclusions of Law and Judgment which was filed on June 29, 2017 (and entered on June 30, 2017).

DATED this 31st day of July, 2017.

COOPER COONS, LTD.
Attorneys at Law

By: _____
J. CHARLES COONS, ESQ.
Nevada Bar No. 10553
THOMAS MISKEY, ESQ.
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10655 Park Run Drive, Suite 130
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V: (702) 998-1500
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies on July 31, 2017, a true and correct copy of the above and foregoing was serve to the following at their last known address(es), facsimile numbers and/or e-mail/other electronic means, pursuant to:

____ **BY MAIL:** N.R.C.P. 5(b), I deposited by first class United States mailing, postage prepaid at Las Vegas, Nevada;

____ **BY FAX:** E.D.C.R. 7.26(a), I served via facsimile at the telephone number provided for such transmissions;

____ **BY MAIL AND FAX:** N.R.C.P. 5(b), I deposited by first class United States mail, postage prepaid in Las Vegas, Nevada; and via facsimile pursuant to E.D.C.R. 7.26(a);

__X_ **BY E-MAIL AND/OR ELECTRONIC MEANS**: N.R.C.P. 5(b)(2)(D) and addressee (s) having consented to electronic service, I via e-mail or other electronic means to the e-mail address(es) of the addressee(s).

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Jessica Perlick	jperlick@brookshubley.com	☑
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/s/ Kim Hexamer

An employee of COOPER COONS, LTD.

Electronically Filed
7/31/2017 4:25 PM
Steven D. Grierson
CLERK OF THE COURT

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10655 Park Run Drive, Suite 130
Las Vegas, Nevada 89144
(702) 998-1500
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

RLP-BRIER CREEK, LLC, a Nevada series limited liability company of the container RED LIZARD PRODUCTIONS, LLC under NRS § 86.296,

Plaintiff,

v.

GREEN TREE SERVICING, LLC, a Delaware limited liability corporation; NATIONAL DEFAULT SERVICING CORPORATION, an Arizona corporation; SILVERSTONE RANCH COMMUNITY ASSOCIATION, a Nevada domestic non-profit coop corporation; LAS VEGAS CITY, an unincorporated city, BAKEMARK WEST, LLC, a foreign limited liability corporation; REPUBLIC SERVICES, INC., a Delaware corporation; JEREMY J. STERLING, an individual; DOES I through X; and ROE CORPORATIONS I through X, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-14-694084-C

Dept. No.: XXXI

CASE APPEAL STATEMENT

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Case Number: A-14-694084-C

1. **NAME OF APPELLANT FILING THIS CASE APPEAL STATEMENT:**

Plaintiff RLP-Brier Creek, LLC.

2. **JUDGE ISSUING THE JUDGMENT OR ORDER APPEALED FROM:**

The Honorable Joanna Kishner.

3. **ALL PARTIES TO THE PROCEEDING IN THE DISTRICT COURT:**

Plaintiff: RLP-Brier Creek, LLC.

Defendants: DITECH FINANCIAL LLC F/K/A GREEN TREE SERVICING, LLC, a Delaware limited liability corporation; NATIONAL DEFAULT SERVICING CORPORATION, an Arizona corporation; SILVERSTONE RANCH COMMUNITY ASSOCIATION, a Nevada domestic non-profit coop corporation; LAS VEGAS CITY, an unincorporated city, BAKEMARK WEST, LLC, a foreign limited liability corporation; REPUBLIC SERVICES, INC., a Delaware corporation; JEREMY J. STERLING, an individual;

4. **ALL PARTIES TO THE APPEAL:**

Appellant: RLP-Brier Creek, LLC:

Respondent: Ditech Financial, LLC f/k/a Green Tree Servicing, LLC.

5. **NAME OF COUNSEL AND WHOM THEY REPRESENT:**

Counsel for RLP-Brier Creek, LLC:

J. CHARLES COONS, Esq.
Nevada Bar No. 10553
THOMAS MISKEY, ESQ.
Nevada Bar No. 13540
Cooper Coons, Ltd.
10655 Park Run Drive, Suite 130
Las Vegas, Nevada 89144

Counsel for Ditech Financial, LLC f/k/a Green Tree Servicing, LLC.

Andrew A. Bao, Esq.
Nevada Bar No. 10508
Brigette E. Foley, Esq.
Nevada Bar No. 12965
Wolfe & Wyman LLP

6757 Spencer Street
Las Vegas, Nevada 89119

6. WHETHER APPELLANT WAS REPRESENTED BY APPOINTED OR RETAINED COUNSEL IN THE DISTRICT COURT:

Appellant was not represented by appointed counsel in the district court and they are represented by retained counsel in the district court.

7. RETAINED COUNSEL ON APPEAL:

Appellant is represented by retained counsel, the law firm of Cooper Coons, Ltd., on appeal:

J. CHARLES COONS, Esq.
Nevada Bar No. 10553
THOMAS MISKEY, ESQ.
Nevada Bar No. 13540
10655 Park Run Drive, Suite 130
Las Vegas, Nevada 89144

8. WHETHER APPELLANT WAS GRANTED LEAVE TO PROCEED IN FORMA PAUPERIS, AND THE DATE OF ENTRY OF THE DISTRICT COURT ORDER GRATING SUCH LEAVE:

No leave was granted.

9. INDICATE THE DATE THE PROCEEDINGS COMMENCED IN THE DISTRICT COURT:

The Complaint in this matter was filed with the Eighth Judicial District Court on January 1, 2014.

10. BRIEF DESCRITPION OF THE NATURE OF THE ACTION AND RESULT:

RLP-Brier Creek, LLC purchased the subject property at an HOA foreclosure sale. The district court failed to quiet title in favor of RLP-Brier Creek, LLC. based on the acts and omissions of the foreclosing HOA.

11. PREVIOUS APPEAL OR WRIT PROCEEDING:

This case has not been previously appealed or subject to a writ.

12. CHILD CUSTODY:

This case does not involve child custody.

13. POSSIBILITY OF SETTLEMENT:

Settlement is unlikely.

DATED this 31st day of July, 2017.

COOPER COONS, LTD.
Attorneys at Law

By: _____
J. CHARLES COONS, ESQ.
Nevada Bar No. 10553
THOMAS MISKEY, ESQ.
Nevada Bar No. 13540
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V: (702) 998-1500
F: (702) 998-1503
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies on July 31, 2017, a true and correct copy of the above and foregoing was serve to the following at their last known address(es), facsimile numbers and/or e-mail/other electronic means, pursuant to:

____ **BY MAIL:** N.R.C.P. 5(b), I deposited by first class United States mailing, postage prepaid at Las Vegas, Nevada;

____ **BY FAX:** E.D.C.R. 7.26(a), I served via facsimile at the telephone number provided for such transmissions;

____ **BY MAIL AND FAX:** N.R.C.P. 5(b), I deposited by first class United States mail, postage prepaid in Las Vegas, Nevada; and via facsimile pursuant to E.D.C.R. 7.26(a);

__X_ **BY E-MAIL AND/OR ELECTRONIC MEANS**: N.R.C.P. 5(b)(2)(D) and addressee (s) having consented to electronic service, I via e-mail or other electronic means to the e-mail address(es) of the addressee(s).

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Jessica Perlick	jperlick@brookshubley.com	☑
Michael R. Brooks, Esq.	MBrooks@brookshubley.com	☑

Brooks Hubley, LLP		
Name	**Email**	**Select**
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Wolfe & Wyman

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Stacy Warner	sawarner@wolfewyman.com	☑

/s/ Kim Hexamer

An employee of COOPER COONS, LTD.

DEPARTMENT 31

CASE SUMMARY

CASE NO. A-14-694084-C

RLP-Brier Creek LLC, Plaintiff(s)	§	Location:	**Department 31**
vs.	§	Judicial Officer:	**Kishner, Joanna S.**
Green Tree Servicing LLC, Defendant(s)	§	Filed on:	**01/07/2014**
	§	Cross-Reference Case Number:	**A694084**

CASE INFORMATION

Statistical Closures
06/29/2017 Summary Judgment

Case Type: **Title to Property**
Subtype: **Quiet Title**

Case Flags: **Appealed to Supreme Court**
Automatically Exempt from Arbitration

DATE — CASE ASSIGNMENT

Current Case Assignment

Case Number	A-14-694084-C
Court	Department 31
Date Assigned	01/07/2014
Judicial Officer	Kishner, Joanna S.

PARTY INFORMATION

Plaintiff	**RLP-Brier Creek LLC**	**Coons, J. Charles** *Retained* 702-998-1500(W)
Defendant	**Bakemark West LLC**	
	Green Tree Servicing LLC	**Bao, Andrew A.** *Retained* 702-476-0100(W)
	Las Vegas City Removed: 03/05/2014 Dismissed	
	National Default Servicing Corporation Removed: 03/23/2015 Dismissed	**Wilde, Gregory L** *Retained* 702-258-8200(W)
	Republic Services Inc Removed: 03/22/2017 Dismissed	
	Silverstone Ranch Community Association Removed: 12/23/2015 Dismissed	**Pengilly, James** *Retained* 702-889-6665(W)
	Sterling, Jeremy J	
Consolidated Case Party	**Rugged Oaks Investments LLC**	**Steffen, John T** *Retained* 7023852500(W)
Counter Claimant	**Green Tree Servicing LLC**	**Bao, Andrew A.** *Retained* 702-476-0100(W)
Counter Defendant	**Hampton & Hampton Collections LLC**	

CASE SUMMARY

CASE NO. A-14-694084-C

	Red Lizard Productions LLC	
	RLP-Brier Creek LLC	**Coons, J. Charles** *Retained* 702-998-1500(W)
	Silverstone Ranch Community Association	**Pengilly, James** *Retained* 702-889-6665(W)
Cross Claimant	**Silverstone Ranch Community Association** Removed: 01/30/2017 Dismissed	**Pengilly, James** *Retained* 702-889-6665(W)
Cross Defendant	**Hampton & Hampton Collections LLC** Removed: 01/30/2017 Dismissed	

DATE	EVENTS & ORDERS OF THE COURT	INDEX
01/07/2014	Complaint Filed By: Counter Defendant RLP-Brier Creek LLC *Complaint for Quiet Title and Injunctive Relief*	
01/07/2014	Case Opened	
01/10/2014	Summons Filed by: Counter Defendant RLP-Brier Creek LLC *Summons*	
01/10/2014	Summons Filed by: Counter Defendant RLP-Brier Creek LLC *Summons*	
01/10/2014	Summons Filed by: Counter Defendant RLP-Brier Creek LLC *Summons*	
01/10/2014	Summons Filed by: Counter Defendant RLP-Brier Creek LLC *Summons*	
01/10/2014	Summons Filed by: Counter Defendant RLP-Brier Creek LLC *Summons*	
01/10/2014	Summons Filed by: Counter Defendant RLP-Brier Creek LLC *Summons*	
01/10/2014	Summons Filed by: Counter Defendant RLP-Brier Creek LLC *Summons*	
01/10/2014	Initial Appearance Fee Disclosure Filed By: Counter Defendant RLP-Brier Creek LLC *Initial Appearance Fee Disclosure*	
01/10/2014		

	Notice of Lis Pendens Filed by: Counter Defendant RLP-Brier Creek LLC *Notice of Lis Pendens*
01/15/2014	Motion for Temporary Restraining Order Filed By: Counter Defendant RLP-Brier Creek LLC *Plaintiff's Motion for a Temporary Restraining Order*
01/15/2014	Certificate of Service Filed by: Counter Defendant RLP-Brier Creek LLC *Certificate of Service by Process by Private Person*
01/15/2014	Certificate of Service Filed by: Counter Defendant RLP-Brier Creek LLC *Certificate of Service by Process by Private Person*
01/15/2014	Certificate of Service Filed by: Counter Defendant RLP-Brier Creek LLC *Certificate of Service by Process by Private Person*
01/15/2014	Certificate of Service Filed by: Counter Defendant RLP-Brier Creek LLC *Certificate of Service by Process by Private Person*
01/15/2014	Certificate of Service Filed by: Counter Defendant RLP-Brier Creek LLC *Certificate of Service by Process by Private Person*
01/15/2014	Certificate of Service Filed by: Counter Defendant RLP-Brier Creek LLC *Certificate of Service by Process by Private Person*
01/15/2014	Certificate of Service Filed by: Counter Defendant RLP-Brier Creek LLC *Certificate of Service by Process by Private Person*
01/16/2014	Certificate of Service Filed by: Counter Defendant RLP-Brier Creek LLC *Certificate of Service by Process by Private Person*
01/16/2014	Certificate of Service Filed by: Counter Defendant RLP-Brier Creek LLC *Certificate of Service by Process by Private Person*
01/16/2014	Certificate of Service Filed by: Counter Defendant RLP-Brier Creek LLC *Certificate of Service by Process by Private Person*
01/16/2014	Certificate of Service Filed by: Counter Defendant RLP-Brier Creek LLC *Certificate of Service by Process by Private Person*
01/16/2014	Certificate of Service Filed by: Counter Defendant RLP-Brier Creek LLC

Certificate of Service by Process by Private Person

01/16/2014 Certificate of Service
Filed by: Counter Defendant RLP-Brier Creek LLC
Certificate of Service by Process by Private Person

01/17/2014 Opposition to Motion
Filed By: Counter Claimant Green Tree Servicing LLC
Opposition to Motion for Preliminary Injunction on Order Shortening Time

01/17/2014 Initial Appearance Fee Disclosure
Filed By: Counter Claimant Green Tree Servicing LLC
Initial Appearance Fee Disclosure

01/21/2014 **Motion for Temporary Restraining Order** (9:30 AM) (Judicial Officer: Kishner, Joanna S.)
01/21/2014, 01/23/2014
Plaintiff's Motion for a Temporary Restraining Order

02/06/2014 Answer
Filed By: Counter Claimant Green Tree Servicing LLC
Defendant Green Tree Servicing LLC's Answer

02/07/2014 *CANCELED* **Status Check** (3:00 AM) (Judicial Officer: Kishner, Joanna S.)
Vacated
Status Check: Order 1/23/14

02/12/2014 Order
Filed By: Counter Defendant RLP-Brier Creek LLC
Order

02/20/2014 **Preliminary Injunction Hearing** (10:15 AM) (Judicial Officer: Kishner, Joanna S.)

02/27/2014 Initial Appearance Fee Disclosure
Filed By: Defendant National Default Servicing Corporation
Initial Appearance Fee Disclosure (NRS Chapter 19)

02/27/2014 Answer to Complaint
Filed by: Defendant National Default Servicing Corporation
Defendant National Default Servicing Corporation's Answer to Plaintiff's Complaint

03/05/2014 Stipulation and Order for Dismissal Without Prejudice
Filed By: Counter Defendant RLP-Brier Creek LLC
Stipulation and Order

03/05/2014 **Order of Dismissal Without Prejudice** (Judicial Officer: Kishner, Joanna S.)
Debtors: Las Vegas City (Defendant)
Creditors: RLP-Brier Creek LLC (Plaintiff)
Judgment: 03/05/2014, Docketed: 03/12/2014

06/19/2014 Answer
Filed By: Defendant Republic Services Inc
Answer to Complaint for Quiet Title and Injunctive Relief

06/19/2014

	Initial Appearance Fee Disclosure Filed By: Defendant Republic Services Inc *Initial Appearance Fee Disclosure*
03/23/2015	Stipulation and Order Filed by: Counter Defendant RLP-Brier Creek LLC *Stipulation and Order*
03/23/2015	Notice of Entry of Stipulation and Order Filed By: Counter Defendant RLP-Brier Creek LLC *Notice of Entry of Stipulation and Order*
03/23/2015	**Order of Dismissal Without Prejudice** (Judicial Officer: Kishner, Joanna S.) Debtors: National Default Servicing Corporation (Defendant) Creditors: RLP-Brier Creek LLC (Plaintiff) Judgment: 03/23/2015, Docketed: 03/30/2015
04/20/2015	Joint Case Conference Report Filed By: Counter Defendant RLP-Brier Creek LLC *Joint Case Conference Report*
05/19/2015	Notice to Appear for Discovery Conference *Notice to Appear for Discovery Conference*
06/01/2015	Joinder to Case Conference Report Filed By: Defendant Republic Services Inc *Defendant, Republic Services, Inc.'s NRCP 16.1 Early Case Conference List of Documents and Witnesses*
06/02/2015	**Discovery Conference** (9:30 AM) (Judicial Officer: Bulla, Bonnie)
06/16/2015	Motion for Leave to File Party: Counter Claimant Green Tree Servicing LLC *Notice of Motion and Motion for Leave to File First Amended Answer to RLP-Brier Creek, LLC's Complaint and Counterclaim Against RLP-Brier Creek, LLC' Silverstone Ranch Community Association; and Hampton & Hampton Collections, LLC*
06/22/2015	Scheduling Order *Scheduling Order*
07/15/2015	Order Setting Civil Non-Jury Trial *Order Setting Civil Non-Jury Trial, Pre-Trial Conference, Calendar Call, and Status Check*
07/17/2015	Supplemental Disclosure of Witnesses & Documents Party: Counter Claimant Green Tree Servicing LLC *Green Tree Servicing LLC's Supplemental Disclosure of Documents and Witnesses*
07/21/2015	**Motion for Leave** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) **07/21/2015, 08/04/2015** *Defendant Green Tree Servicing, LLC's Motion for Leave to File First Amended Answer to RLP-Brier Creek, LLC's Complaint and Counterclaim Against RLP-Brier Creek, LLC' Silverstone Ranch Community Association; and Hampton & Hampton Collections, LLC*
07/24/2015	Supplement

Filed by: Counter Claimant Green Tree Servicing LLC
Supplement to Motion for Leave to File a First Amended Answer to RLP-Brier Creek, LLC's Complaint and Counterclaim Against RLP-Brier Creek, LLC, Silverstone Ranch Community Association and Hampton & Hampton Collections

07/29/2015 Opposition
Filed By: Counter Defendant RLP-Brier Creek LLC
Plaintiff's Opposition to Supplement to Motion for Leave to File First Amended Answer to RLP Brier Creek LLC's Complaint and Counterclaim Against RLP Brier Creek LLC; Silverstone Reanch Community Association; and Hamtpon & Hamption Collections LLC

08/03/2015 Reply to Opposition
Filed by: Counter Claimant Green Tree Servicing LLC
Reply to Plaintiff's Opposition to Motion for Leave to File a First Amended Answer to RLP-Brier Creek, LLC's Complaint and Counterclaim Against RLP-Brier Creek,LLC; Silverstone Ranch Community Association; and Hampton & Hampton Collections, LLC

08/13/2015 Order Granting
Filed By: Counter Claimant Green Tree Servicing LLC
Order Granting Green Tree Servicing, Inc.'s Motion for Leave to File Amended Answer and Counterclaim

08/14/2015 Receipt of Copy
Filed by: Counter Claimant Green Tree Servicing LLC
Receipt of Copy of Defendant Green Tree Servicing, LLC's First Request for Admissions to Plaintiff RLP-Brier Creek, LLC

08/20/2015 Notice of Entry of Order
Filed By: Counter Claimant Green Tree Servicing LLC
Notice of Entry of Order Granting Green Tree Servicing, Inc.,'s Motion for Leave to File Amended Answer and Counterclaim

08/21/2015 *CANCELED* **Status Check** (3:00 AM) (Judicial Officer: Kishner, Joanna S.)
Vacated - per Order
Status Check: Order 8/4/15

08/25/2015 Motion to Extend Discovery
Filed By: Counter Claimant Green Tree Servicing LLC
Green Tree Servicing, Inc.'s Motion to Extend Discovery and Re-Set Pre-Trial Deadlines (First Request)

08/25/2015 Amended Answer
Filed By: Counter Claimant Green Tree Servicing LLC
First Amended Answer to RLP-Brier Creek, LLC's Complaint and Counterclaim Against RLP-Brier Creek, LLC Silverstone Ranch Community Associatin and Hampton and Hampton

08/25/2015 Notice
Filed By: Counter Claimant Green Tree Servicing LLC
Defendant Green Tree Servicing LLC's Notice to Attorney General of Constitutional Challenge to State Statute NRS 116.31162-116.31168

08/26/2015 Certificate of Service
Filed by: Counter Claimant Green Tree Servicing LLC
Certificate of Service

09/02/2015 Reply to Counterclaim
Filed by: Counter Defendant RLP-Brier Creek LLC

	Plaintiff/Counter Defendant's RLP-Brier Creek, LLC's Reply to Defendant/Counterclaimant's Green Tree Servicing, LLC's Counterclaims
09/02/2015	Order Shortening Time Filed By: Counter Claimant Green Tree Servicing LLC *Ex Parte Application for Order Shortening Time for Hearing on Green Tree Servicing, LLC's Motion to Extend Discovery and Re-Set Pre-Trial Deadlines (First Request)*
09/02/2015	Opposition to Motion Filed By: Counter Defendant RLP-Brier Creek LLC *Plaintiff's Opposition to Motion to Extend Discovery (First Request)*
09/03/2015	Affidavit of Service Filed By: Counter Defendant RLP-Brier Creek LLC *Affidavit of Service*
09/11/2015	**Motion to Extend Discovery** (9:30 AM) (Judicial Officer: Bulla, Bonnie) *Green Tree Servicing, Inc.'s Motion to Extend Discovery and Re-Set Pre-Trial Deadlines (First Request)*
09/18/2015	Notice of Pendency of Action Filed By: Counter Claimant Green Tree Servicing LLC *Notice of Pendency of Action*
09/21/2015	Summons Filed by: Counter Claimant Green Tree Servicing LLC *Summons Silverstone Ranch Community Association*
09/25/2015	Affidavit of Service Filed By: Counter Defendant RLP-Brier Creek LLC *Affidavit of Service*
09/29/2015	**Status Check** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
10/23/2015	*CANCELED* **Status Check: Compliance** (11:00 AM) (Judicial Officer: Bulla, Bonnie) *Vacated - per Commissioner*
11/05/2015	*CANCELED* **Pre Trial Conference** (10:15 AM) (Judicial Officer: Kishner, Joanna S.) *Vacated - per Commissioner*
11/13/2015	Discovery Commissioners Report and Recommendations Filed By: Counter Claimant Green Tree Servicing LLC *Discovery Commissioner's Report and Recommendations*
11/18/2015	Answer and Crossclaim Filed By: Counter Defendant Silverstone Ranch Community Association *Silverstone Ranch Community Association's Answer To Green Tree Servicing LLC's Counterclaim And Cross-Claim Against Hampton & Hampton Collections, LLC*
11/18/2015	Initial Appearance Fee Disclosure Filed By: Counter Defendant Silverstone Ranch Community Association *Silverstone Ranch Community Association's Initial Appearance Fee Disclosure*
11/23/2015	Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call *Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call, And Status Check*

12/01/2015	*CANCELED* **Calendar Call** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) *Vacated - per Commissioner*
12/07/2015	*CANCELED* **Bench Trial** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) *Vacated - per Commissioner*
12/09/2015	Motion to Dismiss Filed By: Counter Defendant Silverstone Ranch Community Association *Silverstone Ranch Community Association's Motion To Dismiss Plaintiff's Complaint*
12/17/2015	Summons Filed by: Counter Defendant Silverstone Ranch Community Association *Summons - Hamton & Hampton Collections, LLC*
12/23/2015	Stipulation and Order for Dismissal Without Prejudice Filed By: Counter Defendant RLP-Brier Creek LLC *Stipulation and Order*
12/23/2015	**Order of Dismissal Without Prejudice** (Judicial Officer: Kishner, Joanna S.) Debtors: Silverstone Ranch Community Association (Defendant) Creditors: RLP-Brier Creek LLC (Plaintiff) Judgment: 12/23/2015, Docketed: 12/30/2015
12/28/2015	Notice of Entry of Stipulation & Order for Dismissal Filed By: Counter Defendant RLP-Brier Creek LLC *Notice of Entry of Stipulation and Order*
12/31/2015	Notice Filed By: Counter Claimant Green Tree Servicing LLC *Notice of Name Change*
01/05/2016	Notice of Withdrawal of Motion Filed By: Counter Defendant Silverstone Ranch Community Association *Silverstone Ranch Community Association's Notice Of Withdrawal Of Its Motion To Dismiss Plaintiff's Complaint*
01/12/2016	*CANCELED* **Motion to Dismiss** (9:30 AM) (Judicial Officer: Kishner, Joanna S.) *Vacated* *Silverstone Ranch Community Association's Motion To Dismiss Plaintiff's Complaint*
03/14/2016	Motion to Amend Filed By: Counter Claimant Green Tree Servicing LLC *Ditech Financial LLC's Motion for Leave to Amend Pleadings (Second Request)*
03/15/2016	Errata Filed By: Counter Claimant Green Tree Servicing LLC *Errata to Ditech Financial LLC's Second Amended Answer and Counterclaim*
03/16/2016	Initial Expert Disclosure Filed By: Counter Claimant Green Tree Servicing LLC *Ditech Financial LLC's Initial Expert Disclosure*
03/17/2016	Notice of Non Opposition Filed By: Counter Defendant RLP-Brier Creek LLC

Notice of Non Opposition

04/14/2016 *CANCELED* **Motion to Amend** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
Vacated - per Law Clerk

04/25/2016 Order Granting Motion
Filed By: Counter Claimant Green Tree Servicing LLC
Order Granting Ditech Financial LLC's Motion for Leave to Amend Pleadings (Second Request)

04/26/2016 Notice of Entry of Order
Filed By: Counter Claimant Green Tree Servicing LLC
Notice of Entry of Order Granting Ditech Financial LLC's Motion for Leave to Amend Pleadings (Second Request)

04/27/2016 Answer and Counterclaim
Filed By: Counter Claimant Green Tree Servicing LLC
Ditech Financial LLC's Second Amended Answer & Counterclaim

04/28/2016 Reply
Filed by: Counter Defendant RLP-Brier Creek LLC
Plaintiff/Counter/Defendant RLP-Brier Creek, LLC's Reply to Defendant/Counter/Claimant Ditecch Financial, LLC's Second amended Counterclaims

05/25/2016 Notice of Change of Address
Filed By: Counter Claimant Green Tree Servicing LLC
Notice of Change of Address

06/13/2016 Answer
Filed By: Counter Defendant Silverstone Ranch Community Association
Silverstone Ranch Community Association's Answer To Green Tree Servicing LLC's Second Amended Counterclaim and Cross-Claim Against Hampton & Hampton Collections, LLC

06/23/2016 Substitution of Attorney
Filed by: Counter Claimant Green Tree Servicing LLC
Substitution of Counsel

06/24/2016 Summons
Filed by: Counter Claimant Green Tree Servicing LLC
Summons (Hampton & Hampton Collections)

07/05/2016 **Status Check** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
07/05/2016, 07/12/2016

07/12/2016 Motion for Summary Judgment
Filed By: Counter Defendant RLP-Brier Creek LLC
Motion for Summary Judgment

07/13/2016 Motion
Filed By: Counter Claimant Green Tree Servicing LLC
Ditech Financial LLC's Motion to Exceed Page Limit in Motion for Summary Judgment

07/13/2016 Motion for Summary Judgment
Filed By: Counter Claimant Green Tree Servicing LLC
Defendant/Counterclaimant Ditech Financial LLC's Motion for Summary Judgment

07/15/2016	**Motion** (3:00 AM) (Judicial Officer: Kishner, Joanna S.) *Ditech Financial LLC's Motion to Exceed Page Limit in Motion for Summary Judgment*
07/25/2016	Opposition to Motion For Summary Judgment Filed By: Counter Defendant RLP-Brier Creek LLC *Plaintiff's Opposition to Defendant/Counterclaimant Ditech Financial LLC's Motion For Summary Judgment*
07/29/2016	Opposition Filed By: Counter Defendant Silverstone Ranch Community Association *Counter-Defendant Silverstone Ranch Community Association's Limited Opposition To The Motions For Summary Judgment Filed By Defendant Ditech Financial LLC And Plaintiff RLP-Brier Creek, LLC*
07/29/2016	Opposition Filed By: Counter Claimant Green Tree Servicing LLC *Defendant/Counterclaimant Ditech Financial, LLC's Opposition to Plaintiff's Motion for Summary Judgment*
08/04/2016	Stipulation and Order Filed by: Counter Claimant Green Tree Servicing LLC *Stipulation and Order to Consolidate Hearings on Cross Motions for Summary Judgment and to Continue Trial and Pre-Trial Calendar Call*
08/04/2016	*CANCELED* **Pre Trial Conference** (10:15 AM) (Judicial Officer: Kishner, Joanna S.) *Vacated - per Stipulation and Order*
08/05/2016	Reply in Support Filed By: Counter Defendant RLP-Brier Creek LLC *Reply in Support of Plaintiff's Motion for Summary Judgment*
08/09/2016	Reply in Support Filed By: Counter Claimant Green Tree Servicing LLC *Defendant/Counterclaimant Ditech Financial LLC's Reply in Support of Motion for Summary Judgment*
08/09/2016	Order Setting Civil Non-Jury Trial *Amended Order Setting Civil Non-Jury Trial, Pre-Trial Conference and Calendar Call*
08/16/2016	Notice of Entry of Stipulation and Order Filed By: Counter Claimant Green Tree Servicing LLC *Notice of Entry of Stipulation and Order to Consolidate Hearings on Cross-Motions for Summary Judgment and to Continue Trial and Pre-Trial Calendar Call (First Request)*
08/16/2016	**Motion for Summary Judgment** (9:30 AM) (Judicial Officer: Kishner, Joanna S.) **08/16/2016, 09/15/2016** *Plaintiff's Motion for Summary Judgment*
08/16/2016	**Motion for Summary Judgment** (9:30 AM) (Judicial Officer: Kishner, Joanna S.) **08/16/2016, 09/15/2016** *Defendant/Counterclaimant Ditech Financial LLC's Motion for Summary Judgment*
08/16/2016	**All Pending Motions** (9:30 AM) (Judicial Officer: Kishner, Joanna S.)
08/30/2016	*CANCELED* **Calendar Call** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)

	Vacated - per Stipulation and Order
09/06/2016	*CANCELED* **Bench Trial** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) *Vacated - per Stipulation and Order*
09/13/2016	**At Request of Court** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) *Regarding the Stipulation and Order to Stay the Case*
09/15/2016	**All Pending Motions** (9:30 AM) (Judicial Officer: Kishner, Joanna S.)
09/27/2016	Status Report Filed By: Counter Claimant Green Tree Servicing LLC *Proposed Joint Status Report*
09/27/2016	Motion Filed By: Counter Claimant Green Tree Servicing LLC *Defendant/Counterclaimant Ditech Financial LLC's Motion for Leave to Submit Supplemental Briefing and Seek Reconsideration*
09/30/2016	**Status Check** (3:00 AM) (Judicial Officer: Kishner, Joanna S.) *Status Check: Written Status Update*
10/05/2016	Joinder Filed By: Defendant Republic Services Inc *Defendant, Republic Services, Inc., Joinder to the Joint Status Report*
10/13/2016	**Pre Trial Conference** (10:15 AM) (Judicial Officer: Kishner, Joanna S.)
10/17/2016	Order Denying Motion Filed By: Counter Defendant RLP-Brier Creek LLC *Order*
10/24/2016	Notice of Entry Filed By: Counter Defendant RLP-Brier Creek LLC *Notice of Entry of Order*
10/25/2016	Stipulation and Order Filed by: Counter Claimant Green Tree Servicing LLC *Stipulation and Order to Amend Caption, Re-Open Discovery, and to Continue Trial (Second Request to Continue Trial)*
10/25/2016	Notice of Entry of Stipulation and Order Filed By: Counter Claimant Green Tree Servicing LLC *Notice of Entry of Stipulation and Order*
11/01/2016	*CANCELED* **Motion for Leave** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) *Vacated* *Defendant/Counterclaimant Ditech Financial LLC's Motion for Leave to Submit Supplemental Briefing and Seek Reconsideration*
11/08/2016	*CANCELED* **Calendar Call** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) *Vacated - per Judge*
11/14/2016	*CANCELED* **Bench Trial** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) *Vacated - per Judge*

11/14/2016	Amended Order Setting Civil Non-Jury Trial *Amended Order Setting Civil Non-Jury Trial, Pre-Trial Conference, And Calendar Call*
12/12/2016	Errata Filed By: Counter Claimant Green Tree Servicing LLC *Defendant/Counterclaimant Ditech Financial LLC's Notice of Errata to Motion for Summary Judgment*
01/09/2017	Motion for Summary Judgment Filed By: Counter Claimant Green Tree Servicing LLC *Defendant/Counterclaimant Ditech Financial LLC's Renewed Motion for Summary Judgment*
01/18/2017	Errata Filed By: Counter Claimant Green Tree Servicing LLC *Errata to Defendant/ Counterclaimant Ditech Financial LLC's Renewed Motion for Summary Judgment*
01/24/2017	Opposition to Motion For Summary Judgment Filed By: Counter Defendant RLP-Brier Creek LLC *Plaintiff's Opposition to Defendant/Counterclaimant Ditech Financial LLC's Renewed Motion for Summary Judgment*
01/30/2017	Notice of Voluntary Dismissal Without Prejudice Filed by: Counter Defendant Silverstone Ranch Community Association *Silverstone Ranch Community Association's Notice Of Voluntary Dismissal*
01/30/2017	**Dismissal Pursuant to NRCP 41** (Judicial Officer: Kishner, Joanna S.) Debtors: Hampton & Hampton Collections LLC (Cross Defendant) Creditors: Silverstone Ranch Community Association (Cross Claimant) Judgment: 01/30/2017, Docketed: 02/06/2017
01/31/2017	Joinder to Opposition to Motion Filed by: Counter Defendant Silverstone Ranch Community Association *Silverstone Ranch Community Association's Limited Joinder In Plaintiff's Opposition To Defendant/ Counterclaimant Ditech's Financial Motion For Summary Judgment*
02/02/2017	Reply to Opposition Filed by: Counter Claimant Green Tree Servicing LLC *Defendant/Counter-Claimant Ditech Financial LLC's Reply In Support Of Renewed Motion for Summary Judgment*
02/09/2017	**Pre Trial Conference** (10:15 AM) (Judicial Officer: Kishner, Joanna S.)
02/09/2017	**Motion for Summary Judgment** (10:15 AM) (Judicial Officer: Kishner, Joanna S.) **02/09/2017-02/10/2017** *Defendant/Counterclaimant Ditech Financial LLC's Renewed Motion for Summary Judgment*
02/09/2017	**All Pending Motions** (10:15 AM) (Judicial Officer: Kishner, Joanna S.)
02/10/2017	**Pre Trial Conference** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
02/10/2017	**All Pending Motions** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
02/17/2017	List of Witnesses Filed By: Counter Defendant Silverstone Ranch Community Association

Silverstone Ranch Community Association's List Of Witnesses And Exhibits For Trial

02/21/2017 Pre-Trial Disclosure
Party: Counter Claimant Green Tree Servicing LLC
Defendant/Counterclaimant Ditech Financial LLC's NRCP16.1(A)(3) Pre-Trial Disclosures

02/21/2017 Pre-Trial Disclosure
Party: Defendant Republic Services Inc
Republic Services, Inc.'s Pre-Trial Disclosures Pursuant to 16.1(a)(1) and 16.1(a)(3)

02/23/2017 Pre-Trial Disclosure
Party: Counter Defendant RLP-Brier Creek LLC
Pre-Trial Disclosure

03/06/2017 Joint Pre-Trial Memorandum
Filed By: Counter Defendant RLP-Brier Creek LLC
Joint Pretrial Memorandum

03/07/2017 *CANCELED* **Calendar Call** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
Vacated - per Judge

03/10/2017 Notice
Filed By: Counter Claimant Green Tree Servicing LLC
Defendant/Counterclaimant Ditech Financial LLC's Notice of Intent to Offer N.R.S 52.260 Certificate of Custodian of Records

03/13/2017 *CANCELED* **Bench Trial** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
Vacated - per Judge

03/13/2017 Errata
Filed By: Counter Claimant Green Tree Servicing LLC
Errata to Defendant / Counterclaimant Ditech Financial Llc's Notice of Intent to Offer N.R.S 52.260 Certificate of Custodian of Records

03/14/2017 **Calendar Call** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
Calendar Call

03/15/2017 Audiovisual Transmission Equipment Appearance Request
Party: Counter Claimant Green Tree Servicing LLC
Defendant/Counterclaimant Ditech Financial LLC's Audiovisual Transmission Equipment Appearance Request

03/17/2017 Trial Memorandum
Filed by: Counter Claimant Green Tree Servicing LLC
Defendant/Counterclaimant Ditech Financial LLC fka Green Tree Servicing LLC's Trial Brief

03/20/2017 **Bench Trial** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)

03/21/2017 Errata
Filed By: Counter Claimant Green Tree Servicing LLC
Errata and Supplement to Defendant/Counterclaimant Ditech Financial LLC's Trial Brief

03/21/2017 **Bench Trial** (10:30 AM) (Judicial Officer: Kishner, Joanna S.)

03/21/2017	Stipulation and Order *Stipulation and Order to Amend Case Caption*
03/22/2017	Stipulation and Order for Dismissal Without Prejudice Filed By: Defendant Republic Services Inc *Stipulation and Order to Dismiss Republic Services, Inc.*
03/22/2017	**Order of Dismissal Without Prejudice** (Judicial Officer: Kishner, Joanna S.) Debtors: RLP-Brier Creek LLC (Plaintiff) Creditors: Republic Services Inc (Defendant) Judgment: 03/22/2017, Docketed: 03/29/2017
03/30/2017	Recorders Transcript of Hearing *Recorder's Transcript: Bench Trial -- 3-20-17*
03/30/2017	Recorders Transcript of Hearing *Recorder's Transcript: Bench Trial -- 3-21-17*
05/05/2017	Transcript of Proceedings *Recorder's Transcript: Bench Trial; Amended -- 3-20-17*
05/05/2017	Transcript of Proceedings *Recorder's Transcript: Bench Trial; Amended -- 3-21-17*
06/29/2017	Findings of Fact, Conclusions of Law and Judgment Filed by: Counter Claimant Green Tree Servicing LLC *Findings of Fact, Conclusions of Law and Judgment*
06/29/2017	**Judgment** (Judicial Officer: Kishner, Joanna S.) Debtors: RLP-Brier Creek LLC (Plaintiff) Creditors: Green Tree Servicing LLC (Defendant) Judgment: 06/29/2017, Docketed: 06/30/2017 Debtors: Green Tree Servicing LLC (Counter Claimant) Creditors: Silverstone Ranch Community Association (Counter Defendant) Judgment: 06/29/2017, Docketed: 06/30/2017
06/30/2017	Notice of Entry Filed By: Counter Claimant Green Tree Servicing LLC *Notice of Entry of Findings of Fact, Conclusions of Law and Judgment*
07/10/2017	Memorandum of Costs and Disbursements *Ditech Financial LLC f/k/a Green Tree Servicing, LLC's Memorandum of Costs and Disbursement*
07/31/2017	Notice of Appeal *Notice of Appeal*
07/31/2017	Case Appeal Statement *Case Appeal Statement*

CIVIL COVER SHEET A-14-694084-C

Clark County, Nevada XXXI

Case No. _____
(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone): RLP-Brier Creek, LLC
9516 W FLAMINGO #305
LAS VEGAS NV 89147-5751
Attorney (name/address/phone):
J. Charles Coons, Esq., Cooper Coons Ltd., 10655 Park Run Drive, Suite 130, Las Vegas, Nevada 89144; Ph: (702) 998-1500

Defendant(s) (name/address/phone): GREEN TREE SERVICING, LLC, a Delaware limited liability corporation; NATIONAL DEFAUL SERVICING CORPORATION, an Arizona corporation; SILVERSTONE RANCH COMMUNITY ASSOCIATION, a Nevada domestic non-profit coop corporation; LAS VEGAS CITY, a unincorporated city; et seq;
Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

☐ **Arbitration Requested**

Civil Cases

Real Property

- ☐ **Landlord/Tenant**
  - ☐ Unlawful Detainer
- ☒ **Title to Property**
  - ☐ Foreclosure
  - ☐ Liens
  - ☒ Quiet Title
  - ☐ Specific Performance
- ☐ **Condemnation/Eminent Domain**
- ☐ **Other Real Property**
  - ☐ Partition
  - ☐ Planning/Zoning

Torts

Negligence
- ☐ **Negligence – Auto**
- ☐ **Negligence – Medical/Dental**
- ☐ **Negligence – Premises Liability** (Slip/Fall)
- ☐ **Negligence – Other**

- ☐ **Product Liability**
  - ☐ Product Liability/Motor Vehicle
  - ☐ Other Torts/Product Liability
- ☐ **Intentional Misconduct**
  - ☐ Torts/Defamation (Libel/Slander)
  - ☐ Interfere with Contract Rights
- ☐ **Employment Torts** (Wrongful termination)
- ☐ **Other Torts**
  - ☐ Anti-trust
  - ☐ Fraud/Misrepresentation
  - ☐ Insurance
  - ☐ Legal Tort
  - ☐ Unfair Competition

Probate

Estimated Estate Value: _____

- ☐ **Summary Administration**
- ☐ **General Administration**
- ☐ **Special Administration**
- ☐ **Set Aside Estates**
- ☐ **Trust/Conservatorships**
  - ☐ Individual Trustee
  - ☐ Corporate Trustee
- ☐ **Other Probate**

Other Civil Filing Types

- ☐ **Construction Defect**
  - ☐ Chapter 40
  - ☐ General
- ☐ **Breach of Contract**
  - ☐ Building & Construction
  - ☐ Insurance Carrier
  - ☐ Commercial Instrument
  - ☐ Other Contracts/Acct/Judgment
  - ☐ Collection of Actions
  - ☐ Employment Contract
  - ☐ Guarantee
  - ☐ Sale Contract
  - ☐ Uniform Commercial Code
- ☐ **Civil Petition for Judicial Review**
  - ☐ Foreclosure Mediation
  - ☐ Other Administrative Law
  - ☐ Department of Motor Vehicles
  - ☐ Worker's Compensation Appeal

- ☐ **Appeal from Lower Court** (also check applicable civil case box)
  - ☐ Transfer from Justice Court
  - ☐ Justice Court Civil Appeal
- ☐ **Civil Writ**
  - ☐ Other Special Proceeding
- ☐ **Other Civil Filing**
  - ☐ Compromise of Minor's Claim
  - ☐ Conversion of Property
  - ☐ Damage to Property
  - ☐ Employment Security
  - ☐ Enforcement of Judgment
  - ☐ Foreign Judgment – Civil
  - ☐ Other Personal Property
  - ☐ Recovery of Property
  - ☐ Stockholder Suit
  - ☐ Other Civil Matters

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

- ☐ NRS Chapters 78-88
- ☐ Commodities (NRS 90)
- ☐ Securities (NRS 90)
- ☐ Investments (NRS 104 Art. 8)
- ☐ Deceptive Trade Practices (NRS 598)
- ☐ Trademarks (NRS 600A)
- ☐ Enhanced Case Mgmt/Business
- ☐ Other Business Court Matters

1/07/2014
Date

/s/ J. Charles Coons
Signature of initiating party or representative

Electronically Filed
6/29/2017 3:30 PM
Steven D. Grierson
CLERK OF THE COURT

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Attorneys for Defendant/Counterclaimant
DITECH FINANCIAL LLC f/k/a/ GREEN TREE SERVICING LLC

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

RLP-BRIER CREEK, LLC, a Nevada series limited liability company of the container RED LIZARD PRODUCTIONS, LLC under NRS § 86.296,

Plaintiff,

vs.

DITECH FINANCIAL LLC f/k/a GREEN TREE SERVICING, LLC, a Delaware limited liability corporation;

Defendant.

DITECH FINANCIAL LLC f/k/a GREEN TREE SERVICING LLC, a Delaware limited liability company,

Counterclaimant,

vs.

RLP-BRIER CREEK, LLC, a Nevada series limited liability company of the container RED LIZARD PRODUCTIONS, LLC under NRS § 86.296; and SILVERSTONE RANCH COMMUNITY ASSOCIATION

Counter- Defendants.

Case No.: A-14-694084-C

Dept.: XXXI

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

☐ Voluntary Dismissal	☒ Summary Judgment
☐ Involuntary Dismissal	☐ Stipulated Judgment
☐ Stipulated Dismissal	☐ Default Judgment
☐ Motion to Dismiss by Deft(s)	☐ Judgment of Arbitration

WOLFE & WYMAN LLP ATTORNEYS & COUNSELORS AT LAW

Case Number: A-14-694084-C

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Based on the evidence admitted and arguments made in a bench trial on March 20, 2017 and March 21, 2017, the Court hereby makes the following findings of fact, conclusions of law and enters judgment in favor of Defendant / Counter-Claimant Ditech Financial LLC f/k/a Green Tree Servicing LLC ("Ditech") and in favor of Counter-Defendant Silverstone Ranch Community Association.

I. FINDINGS OF FACT

1. On or about December 31, 2007, Jeremy J. Sterling ("Borrower"), obtained a loan in the original amount of $225,625.00 from Universal Mortgage Corporation, the original lender and beneficiary ("Lender").

2. In connection with that loan transaction, Borrower executed a promissory note ("Note") and a Deed of Trust ("Deed of Trust"). Exhibit 44 and Exhibit 1, respectively.

3. The Deed of Trust was recorded on January 4, 2008. Exhibit 1.

4. Repayment of the Note was secured by a Deed of Trust executed on December 31, 2007, in favor of the Lender and its successors and assigns, and recorded against the real property located at 6845 Brier Creek Lane, Las Vegas, Nevada 89131 ("Property") in the Clark County Official Records on January 4, 2008, as Instrument No. 200801040004094. Exhibit 1. The Note and Deed of Trust are referenced throughout as "Loan."

5. In February 2008, Federal National Mortgage Association ("Fannie Mae") acquired the Loan. Exhibits 34-37, 39.

6. From February 2008 to the present, Fannie Mae has owed the Loan, which is the combination of the Note (Exhibit 44) and Deed of Trust (Exhibit 1). This is evidenced by the business records of Fannie Mae and Ditech, as well as the testimony of Mr. Hamm of Ditech and Mr. Babin of Fannie Mae. Exhibits 34-37, 39, 54.

7. Therefore, Fannie Mae owned the Loan at the time of September 26, 2013 foreclosure sale and continues to own the Loan today.

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8. On February 24, 2009, an assignment of the Deed of Trust from Lender to Mortgage Electronic Registration Systems, Inc. ("MERS") was recorded in the Clark County Official Records as Instrument No. 200902240004517. Exhibit 2.

9. MERS was never the owner of the Loan at any time, but at all times was acting as nominee for the Lenders and its successors / assigns; Fannie Mae remained the owner of the Loan.

10. On September 29, 2011, an assignment of the deed of trust from MERS to Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP ("BANA") was recorded the Clark County Official Records as Instrument No. 201109290000276. Exhibit 5.

11. After Fannie Mae purchased the Loan in February 2008, BANA was never the owner of the Loan at any time; BANA was the servicer of the Loan for Fannie Mae until April 30, 2013. Exhibit 54.

12. Fannie Mae is a federally-chartered corporation which purchases mortgage loans on the secondary market to enable banks and other mortgage originators to make residential loans available to the public.

13. Fannie Mae does not originate mortgage loans, but purchases loans.

14. Fannie Mae did not originate the Loan but purchased the Loan.

15. Fannie Mae contracts with a number of different loan servicers that handle all the day-to-day management of mortgage loans owned by Fannie Mae.

16. On or about September 6, 2008, pursuant to the Housing and Economic Recovery Act of 2008 ("HERA"), the Federal Housing Finance Agency ("FHFA") placed Fannie Mae and Freddie Mac into FHFA's conservatorship.

17. While in FHFA conservatorship, FHFA would need to consent to any extinguishment of a property interest of Fannie Mae.

18. On November 4, 2008, Silverstone Ranch Community Association ("HOA") entered into an agreement with Hampton and Hampton Collections, LLC ("Hamptons") to perform assessment collections for the HOA ("HOA Agreement").

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19. Hamptons was not the exclusive collection agency for the HOA at the time, but the HOA had a variety of different collection agencies at different periods of time throughout Frank Anderson's tenure on the board.

20. In accordance with the HOA Agreement, on October 11, 2010, Hamptons recorded a Notice of Delinquent Assessment's Lien against the Property ("HOA Lien"). Exhibit 3.

21. The Notice of Delinquent Assessment Lien stated the amount of the HOA Lien. Exhibit 21. The October 11, 2010 Notice of Delinquent Assessment Lien was the only Notice of Delinquent Assessment Lien recorded by the HOA against the Property. Trial Testimony page 167, lines 3-19.

22. On November 16, 2010, Hamptons recorded a Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien ("First NOD"). Exhibit 4.

23. On December 16, 2010, Miles Bauer Bergstrom & Winters LLP ("Miles Bauer"), on behalf of BANA, sent a letter to Hamptons offering to pay for nine (9) months of assessments on the HOA lien incurred immediately prior to the First NOD. Exhibit 21.

24. On December 28, 2010, Hamptons sent a letter to Miles Bauer and advised that $463.50 was the "amount due for 9 months of assessments." Exhibit 21.

25. On or about January 21, 2011, Miles Bauer, sent a check (Check No. 7148) for $463.50, equally the nine (9) months of assessments which Hamptons deposited without objection and in the ordinary course would have immediately been provided to the HOA. Exhibit 21.

26. After accepting payment of $463.50, there were no further payments made by Borrower or anybody on behalf of any of the services of the Loan.

27. On March 25, 2013, Hamptons recorded another Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien ("Second NOD"). Exhibit 5.

28. The Second NOD referenced the October 11, 2010 Notice of Delinquent Assessment's Lien (Exhibit 3).

29. On or about May 1, 2013, Green Tree Servicing LLC, now known as Ditech Financial LLC, became the servicer of the Loan for Fannie Mae and continues to service the Loan today on behalf of Fannie Mae. Exhibit 54.

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30. On May 29, 2013, an assignment of the Deed of Trust from BANA to Green Tree Servicing LLC ("Ditech") was recorded as Instrument No. 201305290001492. Exhibit 7. The evidence does not reflect that any further assignments of the Deed of Trust were recorded on the Property after May 29, 2013.

31. Ditech was never the owner of the Loan at any time; Fannie Mae remained owner of the Loan.

32. On July 31, 2013, Hamptons recorded a Notice of Trustee's Sale in relation to the HOA Lien. Exhibit 8.

33. The Notice of Trustee's Sale referenced the October 11, 2010 Notice of Delinquent Assessment Lien (Exhibit 3) when it was recorded, posted and published. Exhibit 21.

34. The original date of the foreclosure sale was September 17, 2013 and the sale date was continued until September 26, 2013.

35. On September 26, 2013, Plaintiff purchased the Property at the foreclosure sale ("HOA Sale") for $6,100.00.

36. There is no evidence as to what was cried at the HOA sale.

37. There was no direct evidence that additional bidders were present at the HOA Sale.

38. The Notice of Trustee' Sale (Exhibit 8) states that the HOA sale "will be made without covenant or warranty, express or implied, regarding title, possession, or encumbrances to pay the remaining principal sum due under the notice of delinquent assessment plus fees and costs of the trustee, to wit: $4,460.11."

39. Thus, there is no specific representation about whether the HOA sale included the super-priority portion of the HOA lien.

40. Plaintiff's representative, Chad Slade, testified that he was a licensed realtor who was aware of Fannie Mae and Freddie Mac and that they were "very big" in the mortgage market and buy many mortgage loans.

41. Mr. Slade testified that many lenders would originate mortgage loans and want to be able to sell those mortgage loans to Fannie Mae and Freddie Mac.

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42. Mr. Slade testified he took into account that the sales price reflected that title insurance for the Property could not be obtained due to the likelihood that a lawsuit would be filed regarding title to the Property after Plaintiff purchased it.

43. Therefore, Plaintiff cannot assert it had no knowledge that the Loan might have been owned by Fannie Mae or Freddie Mac.

44. On October 11, 2013, the Trustee's Deed Upon Sale ("TDUS") was recorded. Exhibit 12.

45. The TDUS did not specify the type of lien included therein, but asserted: a) the lien amount owed was $4,853.41; b), the amount paid by Plaintiff was $6,100; c) the Property was located in the city of Las Vegas; and d) the documentary transfer tax was $989.40.

46. On April 21, 2015, the FHFA asserted that it has not consented and will not consent in the future, to the foreclosure or other extinguishment of any Fannie Mae or Freddie Mac Lien or other property interest in connection with HOA foreclosures of super-priority liens. Exhibit 32.

47. Mr. Babin of Fannie Mae and Mr. Hamm of Ditech testified that the business records of those entities would indicate something different if FHFA had consented to the extinguishment of the Deed of Trust. Their review of the records showed no evidence of such consent.

II. CONCLUSIONS OF LAW

A. Standard of Proof

1. The parties must prove their claims and affirmative defenses by a preponderance of the evidence. *See* Nev. J.I. 2EV.1. Under Nevada law, "[t]he term 'preponderance of the evidence' means such evidence as, when weighed with that opposed to it, has more convincing force, and from which it appears that the greater probability of truth lies therein." Nev. J.I. 2EV.1; *Corbin v. State*, 111 Nev. 378, 892 P.2d 580 (1995) (regarding entrapment, "[p]reponderance of the evidence means such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.").

2. Nevada law draws no distinction between circumstantial and direct evidence. *Deveroux v. State*, 96 Nev. 388, 391 (1980); Nev. J.I. 2EV.3 ("The law makes no distinction between

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the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including circumstantial evidence, should be considered...").

B. 12 U.S.C. §4617 (j)(3) - Federal Foreclosure Bar

3. The Federal Foreclosure Bar applies to the Loan and Property.

4. Pursuant to HERA, Congress granted the FHFA an array of powers, privileges, and exemptions from otherwise applicable laws to enable the FHFA to carry out its statutory functions when acting as Conservator of Fannie Mae and Freddie Mac (the "Enterprises"). Among these is a broad statutory "exemption" captioned "Property Protection" that provides that when the Enterprises are under the conservatorship of the FHFA, none of their property "shall be subject to . . . foreclosure . . . without the consent of [FHFA]." 12 U.S.C. § 4617(j)(3) (the "Federal Foreclosure Bar").

5. Plaintiff bears the burden of proof to establish that FHFA expressly consented to extinguish Fannie Mae's ownership interest in the Deed of Trust. Nevada has a policy against requiring a party to prove a negative, such as proving a lack of consent. *Andrews v. Harley Davidson, Inc.*, 106 Nev. 533, 539, 796 P.2d 1092, 1096-97 (1990) (even where a plaintiff bears the burden of proving his or her strict liability claim, "it is unfair to force the plaintiff consumer to prove a negative, i.e., that the product was not altered."); *see also State v. Haskell*, 14 Nev. 209, 209-210 (1879) (in a forfeiture case, once the defendant establishes good title to the property the burden shifts to the state – "not upon the defendants to prove a negative", *i.e.* that the property was not abandoned or forfeited).

6. Thus, unless the FHFA does give its consent, the federal protection shall be given full effect, which includes preemption of state law. FHFA's April 21, 2015 statement, Exhibit 32, confirms that there was no such consent here. There is no evidence that FHFA took a different position prior to that statement. In the absence of consent, the Court cannot imply FHFA's consent, as doing so would ignore the plain text of the Federal Foreclosure Bar.

7. The Federal Foreclosure Bar contains no conditions regarding the timing and effectiveness of its statutory provisions, which provide that no property of Fannie Mae in conservatorship "shall be subject to . . . foreclosure . . . without the consent of [FHFA]." 12 U.S.C. § 4617(j)(3). Thus, unless and until FHFA gives its consent, the federal protection "shall" be given full

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effect, which includes preemption of state law. *SFR Inv. Pool 1, LLC v. Green Tree Servicing, LLC*, No. A-13-680704 (Nev. Dist. Ct. Nov. 17, 2016) (citing 12 U.S.C. § 4617(j)(3)). A contrary interpretation would invert the default rule provided in the statutory text on its head, as if Congress decreed that FHFA's property interests are subject to extinguishment by foreclosure unless FHFA affirmatively declares that it will not grant consent to the extinguishment of a specific property interest. This is not what the statute says, and courts should not rewrite a statute's text. *See Lamie v. United States Trustee*, 540 U.S. 526, 538 (2004) (rejecting argument that "would result not [in] a construction of [the] statute, but, in effect, an enlargement of it by the court" (quoting *Iselin v. United States*, 270 U. S. 245, 251 (1926))); *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) ("[I]n interpreting a statute a court should always turn first to one, cardinal canon before all others . . . that a legislature says in a statute what it means and means in a statute what it says.").

8. Here, there is no evidence FHFA consented to extinguishment of the Deed of Trust and Plaintiff did not present any evidence to the contrary. Pursuant the Federal Foreclosure Bar, the HOA Sale did not extinguish the Deed of Trust. Therefore, Plaintiff acquired the Property at the HOA Sale subject to the Deed of Trust.

9. Fannie Mae is the current and rightful owner the Deed of Trust, which is in first position on the Property. Plaintiff's interest in the Property is subordinate to the Deed of Trust. This conclusion of law is consistent with the Federal Foreclosure Bar and [AS AN ALTERNATIVE] also consistent with the fact that payment of $463.50 would have extinguished the right to foreclose on the super-priority portion of the HOA Lien. *Stone Hollow Ave. Trust v. Bank of America, N.A.*, 2016 WL 4543202 (Nev. 2016) (unpublished).

10. The Federal Foreclosure Bar preempts N.R.S §116 *et seq.* ("State Foreclosure Statute") because it "explicitly manifests Congress's intent to displace state law." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1022 (9th Cir. 2013). Here, the language of the Federal Foreclosure Bar expressly and automatically bars any nonconsensual limitation or extinguishment through foreclosure of any interest in property held by Fannie Mae while in conservatorship. Accordingly, Congress's creation of these protections clearly manifests its intent to displace state law." *See e.g., Skylights v. Byron*, 112 F. Supp. 3d 1145, 1153 (D. Nev. 2015); *Elmer v. Freddie Mac*, No. 2:14-cv-01999-GMN-NJK, 2015 WL

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4393051 (D. Nev. July 14, 2015); *Premier One Holdings, Inc. v. Fannie Mae*, No. 2:14-cv-02128-GMN-NJK, 2015 WL 4276169 (D. Nev. July 14, 2015); *Williston Inv. Grp., LLC v. JP Morgan Chase Bank, NA*, No. 2:14-cv-02038-GMN-PAL, 2015 WL 4276144 (D. Nev. July 14, 2015); *My Glob. Vill., LLC v. Fannie Mae*, No. 2:15-cv-00211-RCJ-NJK, 2015 WL 4523501 (D. Nev. July 27, 2015); *1597 Ashfield Valley Trust v. Fannie Mae*, No. 2:14-cv-02123-JCM, 2015 WL 4581220 (D. Nev. July 28, 2015); *Fannie Mae v. SFR Invs. Pool 1, LLC*, No. 2:14-CV-2046-JAD-PAL, 2015 WL 5723647 (D. Nev. Sept. 29, 2015); *Saticoy Bay, LLC Series 1702 Empire Mine v. Fannie Mae*, No. 2:14-CV-01975-KJD-NJK, 2015 WL 5709484 (D. Nev. Sept. 29, 2015); *Berezovsky v. Moniz*, No. 2:15-cv-01186-GMN-GWF, 2015 WL 8780198 (D. Nev. Dec. 15, 2015); *Opportunity Homes, LLC v. Freddie Mac*, 169 F. Supp. 3d 1073 (D. Nev. 2016); *FHFA v. SFR Investments Pool 1, LLC*, No. 2:15-cv-1338-GMN-CWH, 2016 WL 2350121 (D. Nev. May 2, 2016); *G & P Inv. Enters., LLC v. Wells Fargo Bank*, N.A., No. 2:15-cv-0907-JCM-NJK, 2016 WL 4370055 (D. Nev. Aug. 4, 2016); *Saticoy Bay LLC, Series 2714 Snapdragon v. Flagstar Bank, FSB*, No. 2-13-CV-1589-JCM-VCF, 2016 WL 1064463 (D. Nev. Mar. 17, 2016); *Koronik v. Nationstar Mortg. LLC*, No. 2:13-CV-2060-GMN-GWF, 2016 WL 7493961 (D. Nev. Dec. 30, 2016); *Nevada Sand Castles, LLC v. Green Tree Servicing LLC*, No. 2:15-CV-0588-GMN-VCF, 2017 WL 701361 (D. Nev. Feb. 22, 2017); *Alessi & Koenig, LLC v. Dolan, Jr.*, No. 2:15-cv-00805-JCM-CWH, 2017 WL 773872 (D. Nev. Feb. 27, 2017); *FHFA v. Nevada New Builds, LLC*, No. 2:16-cv-1188-GMN-CWH, 2017 WL 888480 (D. Nev. Mar. 6, 2017).

11. Nevada state courts have also held that the Federal Foreclosure Bar preempts state law in at least nine cases. *See Saticoy Bay LLC Series 9641 Christine View vs. Fannie Mae*, No. A-13-690924-C (Nev. Dist. Ct. Dec. 8, 2015); *5312 La Quinta Hills LLC, vs. BAC Home Loans Serv'g LP*, No. A-13-693427-C (Nev. Dist. Ct. Jan. 6, 2016); *NV West Servicing LLC v. Bank of America, N.A.*, No. A-14-705996-C (Nev. Dist. Ct. Jan. 25, 2016); *Fort Apache Homes, Inc. vs. JPMorgan Chase Bank, N.A.*, No. A-13-691166-C (Nev. Dist. Ct. Feb. 5, 2016); *RLP-Buckwood Court, LLC, v. GMAC Mortg., LLC*, No. A-13-686438-C, (Nev. Dist. Ct. May 24, 2016); *A&I LLC Series 3 v. Lowry*, No. A-13-691529-C (Nev. Dist. Ct. May 31, 2016); *Gavirati v. Washington Mutual Bank, FA*, No. A-13-690263-C (Nev. Dist. Ct. Sept. 1, 2016); *Nevada New Builds, LLC v. Nationstar Mortg. LLC*, No. A-

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14-704924-C (Nev. Dist. Ct. Sept. 27, 2016); *SFR Inv. Pool 1, LLC v. Green Tree Servicing, LLC*, No. A-13-680704 (Nev. Dist. Ct. Nov. 17, 2016).

12. The Federal Foreclosure Bar also preempts the State Foreclosure Statute under the conflict preemption doctrine—*i.e.*, because "state law is naturally preempted to the extent of any conflict with a federal statute." *Valle del Sol, supra,* 732 F.3d at 1023 (quoting *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000)). "[U]nder the Supremacy Clause . . . any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield." *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 108 (1992) (internal quotations and citations omitted). Thus, the Federal Foreclosure Bar preempts the State Foreclosure Statute to the extent that a homeowner association's foreclosure of its super-priority lien cannot extinguish a property interest of Fannie Mae while it is under FHFA's conservatorship, without the consent of FHFA.

C. Ditech has Standing, as the Servicer and Beneficiary of Record, to represent Fannie Mae and Ditech's Interests in the Loan

13. Ditech was Fannie Mae's contractually authorized servicer of the Loan, with standing to represent and defend Fannie Mae's interests in this action. *See In re Montierth*, 354 P.3d 648, 651 (Nev. 2015) (citing the Restatement (Third of Property: Mortgages § 5.4 cmt. c). Furthermore, Nevada law recognizes that servicers are valid representatives of note owners for purposes of participation in foreclosure mediations and other proceedings. *See Markowitz v. Saxon Special Servicing*, 310 P.3d 569, 574 (Nev. 2013); *Edelstein v. Bank of New York Mellon*, 286 P.3d 249, 260 n.11 (Nev. 2012). Accordingly, it is common practice for servicers to appear in Nevada courts in litigation concerning loans that they may service but do not own.

14. Ditech has standing to protect its own interests in the Loan as servicer and record beneficiary. *See, e.g., CitiMortgage, Inc. v. Country Gardens Owners' Ass'n*, No. 2:13-CV-02039-GMN, 2013 WL 6409951, at *1, *4 (D. Nev. Dec. 5, 2013) (granting servicer preliminary injunction to enjoin foreclosure sale to enforce a super-priority lien); *Saticoy Bay LLC v. SRMOF II 2012-1 Trust*, No. 2:13-CV-1199, 2015 WL 1990076 (D. Nev. Apr. 20, 2015) (holding that the beneficiary of

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the deed of trust was "entitled to argue that state law is constitutionally preempted whether or not the government is a party to the case").

15. Therefore, the HOA Sale did not extinguish Fannie Mae's interests in the Loan and Plaintiff's interests in the Property are subordinate to the Deed of Trust.

D. Ditech's Counterclaims Against the HOA

16. Ditech has not met its burden in establishing that the foreclosure sale was commercially unreasonable or that the HOA foreclosed on the subpriority portion of its lien under its declaratory relief claim against the HOA.

III. JUDGMENT

Based on the above findings of fact and conclusions of law, it is hereby ORDERED, DECREED AND ADJUDGED as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that JUDGMENT is hereby entered in favor of Ditech and against Plaintiff as to ~~all~~ claims set forth herein.

IT IS FURTHER ORDERED that the Trustee's Deed Upon Sale recorded on October 11, 2013, in the Official Records of Clark County as Instrument Number 20131011-0001356 did not extinguish the Deed of Trust recorded on January 4, 2008 in the Official Records of Clark County as Instrument Number 20080104-0004094.

IT IS FURTHER ORDERED that title to the real property commonly known as 6845 Brier Creek Lane, Las Vegas, Nevada 89131 (APN 125-10-814-032) and legally described as:

> PARCEL 1:
>
> LOT 435 IN BLOCK "A" OF SILVERSTONE RANCH PARCEL 4, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 113 OF PLATS, PAGE 15 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.
>
> PARCEL II:
>
> A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, USE AND ENJOYMENT OF THE PRIVATE STREETS AND COMMON LOTS AS SHOWN ON THE MAP REFERRED TO ABOVE, AND AS FURTHER SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED JUNE 14, 2002 IN BOOK 20020614 AS DOCUMENT NO. 02202 OF OFFICIAL RECORDS, AND AS THE SAME MAY FROM TIME TO TIME BE AMENDED AND/OR RECORDED.

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is **HEREBY QUIETED** in that the Deed of Trust recorded on January 4, 2008 in the Official Records of Clark County as Instrument Number 20080104-0004094 remains in full force and effect.

IT IS FURTHER ORDERED that the this Judgment may be recorded against title to the real property commonly known as 6845 Brier Creek Lane, Las Vegas, Nevada 89131 (APN 125-10-814-032) and as legally described herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that JUDGMENT is hereby entered in favor of the Counter-Defendant HOA and against Counter-Claimant Ditech as to all counterclaims asserted by Ditech against the HOA.

DATED this 13 day of June, 2017.

JOANNA S. KISHNER
DISTRICT COURT JUDGE

Respectfully submitted by:	APPROVED AS TO FORM:
WOLFE & WYMAN LLP ANDREW A. BAO, ESQ. Nevada Bar No. 10508 BRIGETTE E. FOLEY, ESQ. Nevada Bar No. 12965 WOLFE & WYMAN LLP 6757 Spencer Street Las Vegas, NV 89119 Tel: (702) 476-0100 Fax: (702) 476-0101 aab@wolfewyman.com befoley@wolfewyman.com *Attorneys for Ditech Financial fka Green Tree Servicing LLC*	**COOPER COONS, LTD.** J. CHARLES COONS, ESQ. Nevada Bar No. 10553 THOMAS A. MISKEY, ESQ. Nevada Bar No. 13540 10655 Park Run Drive, Suite 130 Las Vegas, NV 89144 *Attorneys for RLP-Brier Creek, LLC*

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is **HEREBY QUIETED** in that the Deed of Trust recorded on January 4, 2008 in the Official Records of Clark County as Instrument Number 20080104-0004094 remains in full force and effect.

IT IS FURTHER ORDERED that the this Judgment may be recorded against title to the real property commonly known as 6845 Brier Creek Lane, Las Vegas, Nevada 89131 (APN 125-10-814-032) and as legally described herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that JUDGMENT is hereby entered in favor of the Counter-Defendant HOA and against Counter-Claimant Ditech as to all counterclaims asserted by Ditech against the HOA.

DATED this ____ day of _____, 2017.

_____
DISTRICT COURT JUDGE

Respectfully submitted by: 4/20/17 **WOLFE & WYMAN LLP** _____ ANDREW A. BAO, ESQ. Nevada Bar No. 10508 BRIGETTE E. FOLEY, ESQ. Nevada Bar No. 12965 WOLFE & WYMAN LLP 6757 Spencer Street Las Vegas, NV 89119 Tel: (702) 476-0100 Fax: (702) 476-0101 aab@wolfewyman.com befoley@wolfewyman.com *Attorneys for Ditech Financial fka Green Tree Servicing LLC*	APPROVED AS TO FORM: **COOPER COONS, LTD.** _____ J. CHARLES COONS, ESQ. Nevada Bar No. 10553 THOMAS A. MISKEY, ESQ. Nevada Bar No. 13540 10655 Park Run Drive, Suite 130 Las Vegas, NV 89144 *Attorneys for RLP-Brier Creek, LLC*

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Attorneys for Defendant/Counterclaimant
DITECH FINANCIAL LLC f/k/a/ GREEN TREE SERVICING LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

RLP-BRIER CREEK, LLC, a Nevada series limited liability company of the container RED LIZARD PRODUCTIONS, LLC under NRS § 86.296,

Plaintiff,

vs.

DITECH FINANICAL LLC f/k/a GREEN TREE SERVICING, LLC, a Delaware limited liability corporation;

Defendants.

DITECH FINANCIAL LLC f/k/a GREEN TREE SERVICING LLC, a Delaware limited liability company,

Counterclaimant,

vs.

RLP-BRIER CREEK, LLC, a Nevada series limited liability company of the container RED LIZARD PRODUCTIONS, LLC under NRS § 86.296; and SILVERSTONE RANCH COMMUNITY ASSOCIATION

Counter- Defendants.

Case No.: A-14-694084-C

Dept.: XXXI

NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

TO: ALL PARTIES HEREIN AND TO THEIR RESPECTIVE ATTORNEYS OF RECORD:

WOLFE & WYMAN LLP ATTORNEYS & COUNSELORS AT LAW

PLEASE TAKE NOTICE that on June 29, 201, the court in the above-captioned action entered a Findings of Fact, Conclusions of Law and Judgment. The findings is attached hereto as Exhibit "A" and incorporated by this reference as though fully set forth herein.

DATED: June 30, 2017

WOLFE & WYMAN LLP

By: */s/ Andrew A. Bao*

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of Wolfe & Wyman LLP and that on the 30th day of June, 2017, I did cause a true copy of the foregoing **NOTICE OF ENTRY OF STIPULATION AND ORDER** to be served via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve System to:

All Parties on E-Service List

By: */s/ Cheryl M. Klukas*
Cheryl M. Klukas, an employee of
Wolfe & Wyman LLP

WOLFE & WYMAN LLP
ATTORNEYS & COUNSELORS AT LAW

EXHIBIT “A”

EXHIBIT “A”

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

RLP-BRIER CREEK, LLC, a Nevada series limited liability company of the container RED LIZARD PRODUCTIONS, LLC under NRS § 86.296,

Plaintiff,

vs.

DITECH FINANCIAL LLC f/k/a GREEN TREE SERVICING, LLC, a Delaware limited liability corporation;

Defendant.

DITECH FINANCIAL LLC f/k/a GREEN TREE SERVICING LLC, a Delaware limited liability company,

Counterclaimant,

vs.

RLP-BRIER CREEK, LLC, a Nevada series limited liability company of the container RED LIZARD PRODUCTIONS, LLC under NRS § 86.296; and SILVERSTONE RANCH COMMUNITY ASSOCIATION

Counter- Defendants.

Case No.: A-14-694084-C

Dept.: XXXI

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

☐ Voluntary Dismissal	☒ Summary Judgment
☐ Involuntary Dismissal	☐ Stipulated Judgment
☐ Stipulated Dismissal	☐ Default Judgment
☐ Motion to Dismiss by Deft(s)	☐ Judgment of Arbitration

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FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Based on the evidence admitted and arguments made in a bench trial on March 20, 2017 and March 21, 2017, the Court hereby makes the following findings of fact, conclusions of law and enters judgment in favor of Defendant / Counter-Claimant Ditech Financial LLC f/k/a Green Tree Servicing LLC ("Ditech") and in favor of Counter-Defendant Silverstone Ranch Community Association.

I. FINDINGS OF FACT

1. On or about December 31, 2007, Jeremy J. Sterling ("Borrower"), obtained a loan in the original amount of $225,625.00 from Universal Mortgage Corporation, the original lender and beneficiary ("Lender").

2. In connection with that loan transaction, Borrower executed a promissory note ("Note") and a Deed of Trust ("Deed of Trust"). Exhibit 44 and Exhibit 1, respectively.

3. The Deed of Trust was recorded on January 4, 2008. Exhibit 1.

4. Repayment of the Note was secured by a Deed of Trust executed on December 31, 2007, in favor of the Lender and its successors and assigns, and recorded against the real property located at 6845 Brier Creek Lane, Las Vegas, Nevada 89131 ("Property") in the Clark County Official Records on January 4, 2008, as Instrument No. 200801040004094. Exhibit 1. The Note and Deed of Trust are referenced throughout as "Loan."

5. In February 2008, Federal National Mortgage Association ("Fannie Mae") acquired the Loan. Exhibits 34-37, 39.

6. From February 2008 to the present, Fannie Mae has owed the Loan, which is the combination of the Note (Exhibit 44) and Deed of Trust (Exhibit 1). This is evidenced by the business records of Fannie Mae and Ditech, as well as the testimony of Mr. Hamm of Ditech and Mr. Babin of Fannie Mae. Exhibits 34-37, 39, 54.

7. Therefore, Fannie Mae owned the Loan at the time of September 26, 2013 foreclosure sale and continues to own the Loan today.

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8. On February 24, 2009, an assignment of the Deed of Trust from Lender to Mortgage Electronic Registration Systems, Inc. ("MERS") was recorded in the Clark County Official Records as Instrument No. 200902240004517. Exhibit 2.

9. MERS was never the owner of the Loan at any time, but at all times was acting as nominee for the Lenders and its successors / assigns; Fannie Mae remained the owner of the Loan.

10. On September 29, 2011, an assignment of the deed of trust from MERS to Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP ("BANA") was recorded the Clark County Official Records as Instrument No. 201109290000276. Exhibit 5.

11. After Fannie Mae purchased the Loan in February 2008, BANA was never the owner of the Loan at any time; BANA was the servicer of the Loan for Fannie Mae until April 30, 2013. Exhibit 54.

12. Fannie Mae is a federally-chartered corporation which purchases mortgage loans on the secondary market to enable banks and other mortgage originators to make residential loans available to the public.

13. Fannie Mae does not originate mortgage loans, but purchases loans.

14. Fannie Mae did not originate the Loan but purchased the Loan.

15. Fannie Mae contracts with a number of different loan servicers that handle all the day-to-day management of mortgage loans owned by Fannie Mae.

16. On or about September 6, 2008, pursuant to the Housing and Economic Recovery Act of 2008 ("HERA"), the Federal Housing Finance Agency ("FHFA") placed Fannie Mae and Freddie Mac into FHFA's conservatorship.

17. While in FHFA conservatorship, FHFA would need to consent to any extinguishment of a property interest of Fannie Mae.

18. On November 4, 2008, Silverstone Ranch Community Association ("HOA") entered into an agreement with Hampton and Hampton Collections, LLC ("Hamptons") to perform assessment collections for the HOA ("HOA Agreement").

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19. Hamptons was not the exclusive collection agency for the HOA at the time, but the HOA had a variety of different collection agencies at different periods of time throughout Frank Anderson's tenure on the board.

20. In accordance with the HOA Agreement, on October 11, 2010, Hamptons recorded a Notice of Delinquent Assessment's Lien against the Property ("HOA Lien"). Exhibit 3.

21. The Notice of Delinquent Assessment Lien stated the amount of the HOA Lien. Exhibit 21. The October 11, 2010 Notice of Delinquent Assessment Lien was the only Notice of Delinquent Assessment Lien recorded by the HOA against the Property. Trial Testimony page 167, lines 3-19.

22. On November 16, 2010, Hamptons recorded a Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien ("First NOD"). Exhibit 4.

23. On December 16, 2010, Miles Bauer Bergstrom & Winters LLP ("Miles Bauer"), on behalf of BANA, sent a letter to Hamptons offering to pay for nine (9) months of assessments on the HOA lien incurred immediately prior to the First NOD. Exhibit 21.

24. On December 28, 2010, Hamptons sent a letter to Miles Bauer and advised that $463.50 was the "amount due for 9 months of assessments." Exhibit 21.

25. On or about January 21, 2011, Miles Bauer, sent a check (Check No. 7148) for $463.50, equally the nine (9) months of assessments which Hamptons deposited without objection and in the ordinary course would have immediately been provided to the HOA. Exhibit 21.

26. After accepting payment of $463.50, there were no further payments made by Borrower or anybody on behalf of any of the services of the Loan.

27. On March 25, 2013, Hamptons recorded another Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien ("Second NOD"). Exhibit 5.

28. The Second NOD referenced the October 11, 2010 Notice of Delinquent Assessment's Lien (Exhibit 3).

29. On or about May 1, 2013, Green Tree Servicing LLC, now known as Ditech Financial LLC, became the servicer of the Loan for Fannie Mae and continues to service the Loan today on behalf of Fannie Mae. Exhibit 54.

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30. On May 29, 2013, an assignment of the Deed of Trust from BANA to Green Tree Servicing LLC ("Ditech") was recorded as Instrument No. 201305290001492. Exhibit 7. The evidence does not reflect that any further assignments of the Deed of Trust were recorded on the Property after May 29, 2013.

31. Ditech was never the owner of the Loan at any time; Fannie Mae remained owner of the Loan.

32. On July 31, 2013, Hamptons recorded a Notice of Trustee's Sale in relation to the HOA Lien. Exhibit 8.

33. The Notice of Trustee's Sale referenced the October 11, 2010 Notice of Delinquent Assessment Lien (Exhibit 3) when it was recorded, posted and published. Exhibit 21.

34. The original date of the foreclosure sale was September 17, 2013 and the sale date was continued until September 26, 2013.

35. On September 26, 2013, Plaintiff purchased the Property at the foreclosure sale ("HOA Sale") for $6,100.00.

36. There is no evidence as to what was cried at the HOA sale.

37. There was no direct evidence that additional bidders were present at the HOA Sale.

38. The Notice of Trustee' Sale (Exhibit 8) states that the HOA sale "will be made without covenant or warranty, express or implied, regarding title, possession, or encumbrances to pay the remaining principal sum due under the notice of delinquent assessment plus fees and costs of the trustee, to wit: $4,460.11."

39. Thus, there is no specific representation about whether the HOA sale included the super-priority portion of the HOA lien.

40. Plaintiff's representative, Chad Slade, testified that he was a licensed realtor who was aware of Fannie Mae and Freddie Mac and that they were "very big" in the mortgage market and buy many mortgage loans.

41. Mr. Slade testified that many lenders would originate mortgage loans and want to be able to sell those mortgage loans to Fannie Mae and Freddie Mac.

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42. Mr. Slade testified he took into account that the sales price reflected that title insurance for the Property could not be obtained due to the likelihood that a lawsuit would be filed regarding title to the Property after Plaintiff purchased it.

43. Therefore, Plaintiff cannot assert it had no knowledge that the Loan might have been owned by Fannie Mae or Freddie Mac.

44. On October 11, 2013, the Trustee's Deed Upon Sale ("TDUS") was recorded. Exhibit 12.

45. The TDUS did not specify the type of lien included therein, but asserted: a) the lien amount owed was $4,853.41; b), the amount paid by Plaintiff was $6,100; c) the Property was located in the city of Las Vegas; and d) the documentary transfer tax was $989.40.

46. On April 21, 2015, the FHFA asserted that it has not consented and will not consent in the future, to the foreclosure or other extinguishment of any Fannie Mae or Freddie Mac Lien or other property interest in connection with HOA foreclosures of super-priority liens. Exhibit 32.

47. Mr. Babin of Fannie Mae and Mr. Hamm of Ditech testified that the business records of those entities would indicate something different if FHFA had consented to the extinguishment of the Deed of Trust. Their review of the records showed no evidence of such consent.

II. CONCLUSIONS OF LAW

A. Standard of Proof

1. The parties must prove their claims and affirmative defenses by a preponderance of the evidence. *See* Nev. J.I. 2EV.1. Under Nevada law, "[t]he term 'preponderance of the evidence' means such evidence as, when weighed with that opposed to it, has more convincing force, and from which it appears that the greater probability of truth lies therein." Nev. J.I. 2EV.1; *Corbin v. State*, 111 Nev. 378, 892 P.2d 580 (1995) (regarding entrapment, "[p]reponderance of the evidence means such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.").

2. Nevada law draws no distinction between circumstantial and direct evidence. *Deveroux v. State*, 96 Nev. 388, 391 (1980); Nev. J.I. 2EV.3 ("The law makes no distinction between

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the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including circumstantial evidence, should be considered...").

B. 12 U.S.C. §4617 (j)(3) - Federal Foreclosure Bar

3. The Federal Foreclosure Bar applies to the Loan and Property.

4. Pursuant to HERA, Congress granted the FHFA an array of powers, privileges, and exemptions from otherwise applicable laws to enable the FHFA to carry out its statutory functions when acting as Conservator of Fannie Mae and Freddie Mac (the "Enterprises"). Among these is a broad statutory "exemption" captioned "Property Protection" that provides that when the Enterprises are under the conservatorship of the FHFA, none of their property "shall be subject to . . . foreclosure . . . without the consent of [FHFA]." 12 U.S.C. § 4617(j)(3) (the "Federal Foreclosure Bar").

5. Plaintiff bears the burden of proof to establish that FHFA expressly consented to extinguish Fannie Mae's ownership interest in the Deed of Trust. Nevada has a policy against requiring a party to prove a negative, such as proving a lack of consent. *Andrews v. Harley Davidson, Inc.*, 106 Nev. 533, 539, 796 P.2d 1092, 1096-97 (1990) (even where a plaintiff bears the burden of proving his or her strict liability claim, "it is unfair to force the plaintiff consumer to prove a negative, i.e., that the product was not altered."); *see also State v. Haskell*, 14 Nev. 209, 209-210 (1879) (in a forfeiture case, once the defendant establishes good title to the property the burden shifts to the state – "not upon the defendants to prove a negative", *i.e.* that the property was not abandoned or forfeited).

6. Thus, unless the FHFA does give its consent, the federal protection shall be given full effect, which includes preemption of state law. FHFA's April 21, 2015 statement, Exhibit 32, confirms that there was no such consent here. There is no evidence that FHFA took a different position prior to that statement. In the absence of consent, the Court cannot imply FHFA's consent, as doing so would ignore the plain text of the Federal Foreclosure Bar.

7. The Federal Foreclosure Bar contains no conditions regarding the timing and effectiveness of its statutory provisions, which provide that no property of Fannie Mae in conservatorship "shall be subject to . . . foreclosure . . . without the consent of [FHFA]." 12 U.S.C. § 4617(j)(3). Thus, unless and until FHFA gives its consent, the federal protection "shall" be given full

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effect, which includes preemption of state law. *SFR Inv. Pool 1, LLC v. Green Tree Servicing, LLC*, No. A-13-680704 (Nev. Dist. Ct. Nov. 17, 2016) (citing 12 U.S.C. § 4617(j)(3)). A contrary interpretation would invert the default rule provided in the statutory text on its head, as if Congress decreed that FHFA's property interests are subject to extinguishment by foreclosure unless FHFA affirmatively declares that it will not grant consent to the extinguishment of a specific property interest. This is not what the statute says, and courts should not rewrite a statute's text. *See Lamie v. United States Trustee*, 540 U.S. 526, 538 (2004) (rejecting argument that "would result not [in] a construction of [the] statute, but, in effect, an enlargement of it by the court" (quoting *Iselin v. United States*, 270 U. S. 245, 251 (1926))); *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) ("[I]n interpreting a statute a court should always turn first to one, cardinal canon before all others . . . that a legislature says in a statute what it means and means in a statute what it says.").

8. Here, there is no evidence FHFA consented to extinguishment of the Deed of Trust and Plaintiff did not present any evidence to the contrary. Pursuant the Federal Foreclosure Bar, the HOA Sale did not extinguish the Deed of Trust. Therefore, Plaintiff acquired the Property at the HOA Sale subject to the Deed of Trust.

9. Fannie Mae is the current and rightful owner the Deed of Trust, which is in first position on the Property. Plaintiff's interest in the Property is subordinate to the Deed of Trust. This conclusion of law is consistent with the Federal Foreclosure Bar and [AS AN ALTERNATIVE] also consistent with the fact that payment of $463.50 would have extinguished the right to foreclose on the super-priority portion of the HOA Lien. *Stone Hollow Ave. Trust v. Bank of America, N.A.*, 2016 WL 4543202 (Nev. 2016) (unpublished).

10. The Federal Foreclosure Bar preempts N.R.S §116 *et seq.* ("State Foreclosure Statute") because it "explicitly manifests Congress's intent to displace state law." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1022 (9th Cir. 2013). Here, the language of the Federal Foreclosure Bar expressly and automatically bars any nonconsensual limitation or extinguishment through foreclosure of any interest in property held by Fannie Mae while in conservatorship. Accordingly, Congress's creation of these protections clearly manifests its intent to displace state law." *See e.g., Skylights v. Byron*, 112 F. Supp. 3d 1145, 1153 (D. Nev. 2015); *Elmer v. Freddie Mac*, No. 2:14-cv-01999-GMN-NJK, 2015 WL

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4393051 (D. Nev. July 14, 2015); *Premier One Holdings, Inc. v. Fannie Mae*, No. 2:14-cv-02128-GMN-NJK, 2015 WL 4276169 (D. Nev. July 14, 2015); *Williston Inv. Grp., LLC v. JP Morgan Chase Bank, NA*, No. 2:14-cv-02038-GMN-PAL, 2015 WL 4276144 (D. Nev. July 14, 2015); *My Glob. Vill., LLC v. Fannie Mae*, No. 2:15-cv-00211-RCJ-NJK, 2015 WL 4523501 (D. Nev. July 27, 2015); *1597 Ashfield Valley Trust v. Fannie Mae*, No. 2:14-cv-02123-JCM, 2015 WL 4581220 (D. Nev. July 28, 2015); *Fannie Mae v. SFR Invs. Pool 1, LLC*, No. 2:14-CV-2046-JAD-PAL, 2015 WL 5723647 (D. Nev. Sept. 29, 2015); *Saticoy Bay, LLC Series 1702 Empire Mine v. Fannie Mae*, No. 2:14-CV-01975-KJD-NJK, 2015 WL 5709484 (D. Nev. Sept. 29, 2015); *Berezovsky v. Moniz*, No. 2:15-cv-01186-GMN-GWF, 2015 WL 8780198 (D. Nev. Dec. 15, 2015); *Opportunity Homes, LLC v. Freddie Mac*, 169 F. Supp. 3d 1073 (D. Nev. 2016); *FHFA v. SFR Investments Pool 1, LLC*, No. 2:15-cv-1338-GMN-CWH, 2016 WL 2350121 (D. Nev. May 2, 2016); *G & P Inv. Enters., LLC v. Wells Fargo Bank*, N.A., No. 2:15-cv-0907-JCM-NJK, 2016 WL 4370055 (D. Nev. Aug. 4, 2016); *Saticoy Bay LLC, Series 2714 Snapdragon v. Flagstar Bank, FSB*, No. 2-13-CV-1589-JCM-VCF, 2016 WL 1064463 (D. Nev. Mar. 17, 2016); *Koronik v. Nationstar Mortg. LLC*, No. 2:13-CV-2060-GMN-GWF, 2016 WL 7493961 (D. Nev. Dec. 30, 2016); *Nevada Sand Castles, LLC v. Green Tree Servicing LLC*, No. 2:15-CV-0588-GMN-VCF, 2017 WL 701361 (D. Nev. Feb. 22, 2017); *Alessi & Koenig, LLC v. Dolan, Jr.*, No. 2:15-cv-00805-JCM-CWH, 2017 WL 773872 (D. Nev. Feb. 27, 2017); *FHFA v. Nevada New Builds, LLC*, No. 2:16-cv-1188-GMN-CWH, 2017 WL 888480 (D. Nev. Mar. 6, 2017).

11. Nevada state courts have also held that the Federal Foreclosure Bar preempts state law in at least nine cases. *See Saticoy Bay LLC Series 9641 Christine View vs. Fannie Mae*, No. A-13-690924-C (Nev. Dist. Ct. Dec. 8, 2015); *5312 La Quinta Hills LLC, vs. BAC Home Loans Serv'g LP*, No. A-13-693427-C (Nev. Dist. Ct. Jan. 6, 2016); *NV West Servicing LLC v. Bank of America, N.A.*, No. A-14-705996-C (Nev. Dist. Ct. Jan. 25, 2016); *Fort Apache Homes, Inc. vs. JPMorgan Chase Bank, N.A.*, No. A-13-691166-C (Nev. Dist. Ct. Feb. 5, 2016); *RLP-Buckwood Court, LLC, v. GMAC Mortg., LLC*, No. A-13-686438-C, (Nev. Dist. Ct. May 24, 2016); *A&I LLC Series 3 v. Lowry*, No. A-13-691529-C (Nev. Dist. Ct. May 31, 2016); *Gavirati v. Washington Mutual Bank, FA*, No. A-13-690263-C (Nev. Dist. Ct. Sept. 1, 2016); *Nevada New Builds, LLC v. Nationstar Mortg. LLC*, No. A-

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14-704924-C (Nev. Dist. Ct. Sept. 27, 2016); *SFR Inv. Pool 1, LLC v. Green Tree Servicing, LLC*, No. A-13-680704 (Nev. Dist. Ct. Nov. 17, 2016).

12. The Federal Foreclosure Bar also preempts the State Foreclosure Statute under the conflict preemption doctrine—*i.e.*, because "state law is naturally preempted to the extent of any conflict with a federal statute." *Valle del Sol, supra,* 732 F.3d at 1023 (quoting *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000)). "[U]nder the Supremacy Clause . . . any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield." *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 108 (1992) (internal quotations and citations omitted). Thus, the Federal Foreclosure Bar preempts the State Foreclosure Statute to the extent that a homeowner association's foreclosure of its super-priority lien cannot extinguish a property interest of Fannie Mae while it is under FHFA's conservatorship, without the consent of FHFA.

C. Ditech has Standing, as the Servicer and Beneficiary of Record, to represent Fannie Mae and Ditech's Interests in the Loan

13. Ditech was Fannie Mae's contractually authorized servicer of the Loan, with standing to represent and defend Fannie Mae's interests in this action. *See In re Montierth*, 354 P.3d 648, 651 (Nev. 2015) (citing the Restatement (Third of Property: Mortgages § 5.4 cmt. c). Furthermore, Nevada law recognizes that servicers are valid representatives of note owners for purposes of participation in foreclosure mediations and other proceedings. *See Markowitz v. Saxon Special Servicing*, 310 P.3d 569, 574 (Nev. 2013); *Edelstein v. Bank of New York Mellon*, 286 P.3d 249, 260 n.11 (Nev. 2012). Accordingly, it is common practice for servicers to appear in Nevada courts in litigation concerning loans that they may service but do not own.

14. Ditech has standing to protect its own interests in the Loan as servicer and record beneficiary. *See, e.g., CitiMortgage, Inc. v. Country Gardens Owners' Ass'n*, No. 2:13-CV-02039-GMN, 2013 WL 6409951, at *1, *4 (D. Nev. Dec. 5, 2013) (granting servicer preliminary injunction to enjoin foreclosure sale to enforce a super-priority lien); *Saticoy Bay LLC v. SRMOF II 2012-1 Trust*, No. 2:13-CV-1199, 2015 WL 1990076 (D. Nev. Apr. 20, 2015) (holding that the beneficiary of

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the deed of trust was "entitled to argue that state law is constitutionally preempted whether or not the government is a party to the case").

15. Therefore, the HOA Sale did not extinguish Fannie Mae's interests in the Loan and Plaintiff's interests in the Property are subordinate to the Deed of Trust.

D. Ditech's Counterclaims Against the HOA

16. Ditech has not met its burden in establishing that the foreclosure sale was commercially unreasonable or that the HOA foreclosed on the subpriority portion of its lien under its declaratory relief claim against the HOA.

III. JUDGMENT

Based on the above findings of fact and conclusions of law, it is hereby ORDERED, DECREED AND ADJUDGED as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that JUDGMENT is hereby entered in favor of Ditech and against Plaintiff as to ~~all~~ claims set forth herein.

IT IS FURTHER ORDERED that the Trustee's Deed Upon Sale recorded on October 11, 2013, in the Official Records of Clark County as Instrument Number 20131011-0001356 did not extinguish the Deed of Trust recorded on January 4, 2008 in the Official Records of Clark County as Instrument Number 20080104-0004094.

IT IS FURTHER ORDERED that title to the real property commonly known as 6845 Brier Creek Lane, Las Vegas, Nevada 89131 (APN 125-10-814-032) and legally described as:

> PARCEL 1:
>
> LOT 435 IN BLOCK "A" OF SILVERSTONE RANCH PARCEL 4, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 113 OF PLATS, PAGE 15 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.
>
> PARCEL II:
>
> A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, USE AND ENJOYMENT OF THE PRIVATE STREETS AND COMMON LOTS AS SHOWN ON THE MAP REFERRED TO ABOVE, AND AS FURTHER SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED JUNE 14, 2002 IN BOOK 20020614 AS DOCUMENT NO. 02202 OF OFFICIAL RECORDS, AND AS THE SAME MAY FROM TIME TO TIME BE AMENDED AND/OR RECORDED.

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is **HEREBY QUIETED** in that the Deed of Trust recorded on January 4, 2008 in the Official Records of Clark County as Instrument Number 20080104-0004094 remains in full force and effect.

IT IS FURTHER ORDERED that the this Judgment may be recorded against title to the real property commonly known as 6845 Brier Creek Lane, Las Vegas, Nevada 89131 (APN 125-10-814-032) and as legally described herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that JUDGMENT is hereby entered in favor of the Counter-Defendant HOA and against Counter-Claimant Ditech as to all counterclaims asserted by Ditech against the HOA.

DATED this 13 day of June, 2017.

JOANNA S. KISHNER
DISTRICT COURT JUDGE

Respectfully submitted by:	APPROVED AS TO FORM:
WOLFE & WYMAN LLP ANDREW A. BAO, ESQ. Nevada Bar No. 10508 BRIGETTE E. FOLEY, ESQ. Nevada Bar No. 12965 WOLFE & WYMAN LLP 6757 Spencer Street Las Vegas, NV 89119 Tel: (702) 476-0100 Fax: (702) 476-0101 aab@wolfewyman.com befoley@wolfewyman.com *Attorneys for Ditech Financial fka Green Tree Servicing LLC*	**COOPER COONS, LTD.** J. CHARLES COONS, ESQ. Nevada Bar No. 10553 THOMAS A. MISKEY, ESQ. Nevada Bar No. 13540 10655 Park Run Drive, Suite 130 Las Vegas, NV 89144 *Attorneys for RLP-Brier Creek, LLC*

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ATTORNEYS & COUNSELORS AT LAW

is **HEREBY QUIETED** in that the Deed of Trust recorded on January 4, 2008 in the Official Records of Clark County as Instrument Number 20080104-0004094 remains in full force and effect.

IT IS FURTHER ORDERED that the this Judgment may be recorded against title to the real property commonly known as 6845 Brier Creek Lane, Las Vegas, Nevada 89131 (APN 125-10-814-032) and as legally described herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that JUDGMENT is hereby entered in favor of the Counter-Defendant HOA and against Counter-Claimant Ditech as to all counterclaims asserted by Ditech against the HOA.

DATED this ____ day of _____, 2017.

_____
DISTRICT COURT JUDGE

Respectfully submitted by: 4/20/17 **WOLFE & WYMAN LLP** _____ ANDREW A. BAO, ESQ. Nevada Bar No. 10508 BRIGETTE E. FOLEY, ESQ. Nevada Bar No. 12965 WOLFE & WYMAN LLP 6757 Spencer Street Las Vegas, NV 89119 Tel: (702) 476-0100 Fax: (702) 476-0101 aab@wolfewyman.com befoley@wolfewyman.com *Attorneys for Ditech Financial fka Green Tree Servicing LLC*	APPROVED AS TO FORM: **COOPER COONS, LTD.** _____ J. CHARLES COONS, ESQ. Nevada Bar No. 10553 THOMAS A. MISKEY, ESQ. Nevada Bar No. 13540 10655 Park Run Drive, Suite 130 Las Vegas, NV 89144 *Attorneys for RLP-Brier Creek, LLC*

WOLFE & WYMAN LLP
ATTORNEYS & COUNSELORS AT LAW

APPROVED AS TO FORM:

PENGILLY LAW FIRM

JAMES W. PENGILLY, ESQ.
Nevada Bar No. 6085
ELIZABETH B. LOWELL, ESQ.
Nevada Bar No. 8551
1995 Village Center Circle, Suite 190
Las Vegas, NV 89134
Attorneys for Silverstone Ranch Community Association

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ATTORNEYS & COUNSELORS AT LAW

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**January 21, 2014**

A-14-694084-C RLP-Brier Creek LLC, Plaintiff(s)
vs.
Green Tree Servicing LLC, Defendant(s)

January 21, 2014 **9:30 AM** **Motion for Temporary Restraining Order**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Connell, Christopher S.	Attorney
Coons, J. Charles	Attorney

JOURNAL ENTRIES

- Court noted no opposition. Mr. Connell advised opposition filed 1/17/14. No copy provided to the Court. COURT ORDERED, matter CONTINUED. Mr. Connell stated property will not be sold on Thursday 1/23/14.

CONTINUED TO: 1/23/14 @ 9:30 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**January 23, 2014**

A-14-694084-C RLP-Brier Creek LLC, Plaintiff(s)
vs.
Green Tree Servicing LLC, Defendant(s)

January 23, 2014 **9:30 AM** **Motion for Temporary Restraining Order**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Connell, Christopher S.	Attorney
Coons, J. Charles	Attorney

JOURNAL ENTRIES

- Mr. Coons states sale has been delayed until 2/25/14, no need for TRO to be argued today. Counsel request Preliminary Injunction Hearing be set and will stand on the briefing. Court noted any additional briefing due 2/18/14, although not required. COURT ORDERED, matter SET for Preliminary Injunction Hearing. Plaintiff's counsel to prepare the order, circulating to defense counsel for approval as to form and content. Matter SET for Status Check regarding receipt of proposed order.

2/7/14 STATUS CHECK: ORDER 1/23/14 (CHAMBERS)

2/20/14 10:15 AM PRELIMINARY INJUNCTION HEARING

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**February 20, 2014**

A-14-694084-C RLP-Brier Creek LLC, Plaintiff(s)
vs.
Green Tree Servicing LLC, Defendant(s)

February 20, 2014 **10:15 AM** **Preliminary Injunction Hearing**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- No parties present. COURT ORDERED, matter OFF CALENDAR.

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**June 02, 2015**

A-14-694084-C RLP-Brier Creek LLC, Plaintiff(s)
vs.
Green Tree Servicing LLC, Defendant(s)

June 02, 2015 **9:30 AM** **Discovery Conference**

HEARD BY: Bulla, Bonnie **COURTROOM:** RJC Level 5 Hearing Room

COURT CLERK: Alan Castle

RECORDER: Francesca Haak

REPORTER:

PARTIES PRESENT:

Miskey, Thomas	Attorney
Najjar, Alia A	Attorney
Williams, Donald H	Attorney

JOURNAL ENTRIES

- Counsel anticipate 2 - 3 days for trial re: Quiet Title / Declaratory Relief. No settlement conference requested. COMMISSIONER RECOMMENDED, discovery cutoff is 9/14/15; adding parties, amended pleadings, and initial expert disclosures DUE 6/16/15; rebuttal expert disclosures DUE 7/16/15; dispositive motions TO BE FILED BY 10/14/15. Scheduling Order will issue.

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**July 21, 2015**

A-14-694084-C RLP-Brier Creek LLC, Plaintiff(s)
vs.
Green Tree Servicing LLC, Defendant(s)

July 21, 2015 **9:00 AM** **Motion for Leave**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Brooks, Michael R.	Attorney
Miskey, Thomas	Attorney

JOURNAL ENTRIES

- DEFENDANT GREEN TREE SERVICING, LLC'S MOTION FOR LEAVE TO FILE FIRST AMENDED ANSWER TO RLP-BRIER CREEK, LLC'S COMPLAINT AND COUNTERCLAIM AGAINST RLP-BRIER CREEK, LLC, SILVERSTONE RANCH COMMUNITY ASSOCIATION; AND HAMPTON & HAMPTON COLLECTIONS, LLC

Court noted recent decision, Nutton v. Sunset Station. Mr. Brooks states he will be requesting additional time to do discovery. Mr. Brooks requests briefing schedule then return and argue motion. Mr. Miskey states he wants to maintain current discovery and trial date. Mr. Brooks requests supplemental briefing on the Nutton v. Sunset Station issue. COURT ORDERED, matter CONTINUED. Any supplemental briefing due 7/24/15; Replies, if any, due 7/30/15 noon.

CONTINUED TO: 8/4/15 @ 9:00 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**August 04, 2015**

A-14-694084-C RLP-Brier Creek LLC, Plaintiff(s)
vs.
Green Tree Servicing LLC, Defendant(s)

August 04, 2015 **9:00 AM** **Motion for Leave**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Brooks, Michael R.	Attorney
Miskey, Thomas	Attorney

JOURNAL ENTRIES

- Matter argued and submitted. Court finds good cause under Rule 16 and Rule 15, and ORDERED, Defendant Green Tree Servicing, LLC's Motion for Leave to File First Amended Answer to RLP-Brier Creek, LLC's Complaint and Counterclaim Against RLP-Brier Creek, LLC's Silverstone Ranch Community Association; and Hampton & Hampton Collections, LLC is GRANTED. Mr. Brooks to prepare the Order, to include both standards, circulating to all counsel for approval as to form and content. Matter SET for Status Check regarding receipt of proposed order.

8/21/15 STATUS CHECK: ORDER (CHAMBERS)

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**September 11, 2015**

A-14-694084-C RLP-Brier Creek LLC, Plaintiff(s)
vs.
Green Tree Servicing LLC, Defendant(s)

September 11, 2015	**9:30 AM**	**Motion to Extend Discovery**	**Green Tree Servicing, Inc.'s Motion to Extend Discovery and Re-Set Pre-Trial Deadlines (First Request)**

HEARD BY: Bulla, Bonnie **COURTROOM:** RJC Level 5 Hearing Room

COURT CLERK: Jennifer Lott

RECORDER: Francesca Haak

REPORTER:

PARTIES PRESENT:

Miskey, Thomas	Attorney
Perlick, Jessica E.	Attorney

JOURNAL ENTRIES

- Argument by Ms. Perlick. COMMISSIONER RECOMMENDED, motion is GRANTED; discovery cutoff EXTENDED to 6/13/16; adding parties, amended pleadings, and initial expert disclosures DUE 3/15/16; rebuttal expert disclosures DUE 4/14/16; FILE dispositive motions by 7/13/16; Trial ready 8/29/16, however, the 12/7/15 Trial date STANDS; when the Judge signs the Report and Recommendation, 12/7/15 Trial date will be vacated. Counsel should not expect another extension (2014 case).

Ms. Perlick to prepare the Report and Recommendations, and Mr. Miskey to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution. Ms. Perlick to appear at status check hearing to report on the Report and Recommendations.

10/23/15 11:00 a.m. Status Check: Compliance

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**September 29, 2015**

A-14-694084-C RLP-Brier Creek LLC, Plaintiff(s)
vs.
Green Tree Servicing LLC, Defendant(s)

September 29, 2015 9:00 AM Status Check

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Miskey, Thomas	Attorney
Perlick, Jessica E.	Attorney
Williams, Donald H	Attorney

JOURNAL ENTRIES

- STATUS CHECK

Ms. Perlick states Green Tree Servicing LLC is now known as Ditech Financial LLC, recent merger and acquisition. Both counsel state it should have no impact on this case. Court noted motion to extend discovery was granted by Commissioner Bulla granted on 9/11/15, counsel asked for trial continuance before the Discovery Commissioner, should have come before this Court. Court further noted it has not yet seen the new orders. Ms. Perlick states a 9 month continuance was requested and granted by Discovery Commissioner, submitted a Report and Recommendation to Commissioner Bulla. Upon Court's inquiry, Ms. Perlick states 9 months was needed as Hampton & Hampton Collections LLC and Silverstone Ranch Community Association were just brought into the case, neither have appeared in the case yet, Hampton & Hampton was served on 9/1/15 and they have asked for an extension to respond. Mr. Miskey in agreement. Upon Court's inquiry, both counsel state too early for settlement conference. Court noted if it has any outstanding questions, it may set a telephonic conference to discuss.

Matter recalled. (10:03 am)

Mr. Williams now present, was stuck in another hearing. Court provided overview of status check. Mr. Williams in agreement and thanked the Court.

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**July 05, 2016**

A-14-694084-C RLP-Brier Creek LLC, Plaintiff(s)
vs.
Green Tree Servicing LLC, Defendant(s)

July 05, 2016 **9:00 AM** **Status Check**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Markmon, David	Attorney
Miskey, Thomas	Attorney

JOURNAL ENTRIES

- STATUS CHECK: PURSUANT TO TRIAL ORDER

Court notes counsel for Green Tree Servicing LLC not present at mandatory Court Ordered Status Check pursuant to the trial order. Court further noted counterclaim was filed. Matter trailed. Counsel will attempt to contact missing counsel. Matter recalled. Mr. Markmon states he has counsel currently on the phone, states he was unaware of status check. COURT ORDERED, matter CONTINUED; all parties must appear in-person. Mr. Markmon states he will notify counsel for Green Tree Servicing.

CONTINUED TO: 7/12/16 9:00 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**July 12, 2016**

A-14-694084-C RLP-Brier Creek LLC, Plaintiff(s)
vs.
Green Tree Servicing LLC, Defendant(s)

July 12, 2016 **9:00 AM** **Status Check**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Markmon, David	Attorney
Miskey, Thomas	Attorney
Verlander, Richard G.	Attorney

JOURNAL ENTRIES

- Statements by Mr. Verlander. Upon Court's inquiry, Mr. Miskey advised they are ready for trial and counsel estimated two to three days for trial. Court further queried counsel regarding assisting the parties, Mr. Verlander stated there is nothing that needs to be addressed at this time. Court directed parties to review the Department's trial procedures and exhibit guidelines.

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**July 15, 2016**

A-14-694084-C RLP-Brier Creek LLC, Plaintiff(s)
vs.
Green Tree Servicing LLC, Defendant(s)

July 15, 2016 **3:00 AM** **Motion**

HEARD BY: Kishner, Joanna S. **COURTROOM:** Chambers

COURT CLERK: Sandra Harrell

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- DITECH FINANCIAL LLC'S MOTION TO EXCEED PAGE LIMIT IN MOTION FOR SUMMARY JUDGMENT

On July 13, 2016 a Motion to Exceed Page Limit in Motion for Summary Judgment was filed by Defendant Ditech Financial, LLC. The matter was subsequently placed on Department XXXI's motion calendar for August 16, 2016. As this Motion was placed on calendar the same week as the Summary Judgment is set to be heard the parties requested that the Motion be advanced and represented to the Court that no party has an opposition to the Motion to Exceed Page Limit. As no Opposition has been filed, the Court finds that the motion is appropriately advanced pursuant to EDCR 2.23 and GRANTED pursuant to EDCR 2.20, and based on a full review of the pending motion it is also GRANTED on the merits.

This Decision sets forth the Court's intended disposition on the subject but anticipates further Order of the Court to make such disposition effective as an Order or Judgment. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing and argument.

Counsel for Defendant Ditech Financial, LLC is directed to prepare the Order, and submit it to chambers within 10 days pursuant to EDCR 7.21.

CLERK'S NOTE: The above minute order has been distributed via e-mail to: Colt Dodrill, Esq.\sjh 7-15-16

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**August 16, 2016**

A-14-694084-C RLP-Brier Creek LLC, Plaintiff(s)
vs.
Green Tree Servicing LLC, Defendant(s)

August 16, 2016 **9:30 AM** **All Pending Motions**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Lowell, Elizabeth B.	Attorney
Miskey, Thomas	Attorney
Verlander, Richard G.	Attorney

JOURNAL ENTRIES

- PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT...DEFENDANT/COUNTERCLAIMANT DITECH FINANCIAL LLC'S MOTION FOR SUMMARY JUDGMENT

Mr. Verlander requests the opportunity to provide some limited supplemental briefing on the change of the case law. Both Mr. Miskey and Ms. Lowell were fine with Mr. Verlander's request. COURT ORDERED, matter CONTINUED. Counsel may provide supplemental briefing, although not required, on the impact of the recent 9th Circuit case if any, simultaneous briefing due by 5:00 pm on 9/7/16.

CONTINUED TO: 9/15/16 9:30 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**September 13, 2016**

A-14-694084-C RLP-Brier Creek LLC, Plaintiff(s)
vs.
Green Tree Servicing LLC, Defendant(s)

September 13, 2016 9:00 AM At Request of Court

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Lowell, Elizabeth B.	Attorney
Miles, Christian A.	Attorney
Miskey, Thomas	Attorney
Starbuck, Drew	Attorney

JOURNAL ENTRIES

- STATUS CHECK: REGARDING STIPULATION AND ORDER TO STAY THE CASE

Court noted stipulation received, only two counsel listed. Mr. Miles states he can rectify the problem. Statements by Ms. Lowell. Counsel argued for stay. Discussion regarding what parties are actually still in this case. Ms. Lowell states the HOA will be withdrawing its claims against Hampton & Hampton Collections LLC. Court stated its findings, and DENIED approval of Stipulation. Court DIRECTED counsel to provide a joint written status update within the next two weeks as to who is actually in the case, caption must be cleaned up. Matter SET for Status Check in Chambers regarding receipt of written status update.

9/30/16 STATUS CHECK: WRITTEN STATUS UPDATE (CHAMBERS)

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**September 15, 2016**

A-14-694084-C RLP-Brier Creek LLC, Plaintiff(s)
vs.
Green Tree Servicing LLC, Defendant(s)

September 15, 2016 9:30 AM All Pending Motions

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Lowell, Elizabeth B.	Attorney
Miskey, Thomas	Attorney
Starbuck, Drew	Attorney
Verlander, Richard G.	Attorney

JOURNAL ENTRIES

- PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT:

Matter argued and submitted. Court stated its findings, and Ordered, Motion DENIED WITHOUT PREJUDICE.

DEFENDANT / COUNTERCLAIMANT DITECH FINANCIAL LLC'S MOTION FOR SUMMARY JUDGMENT:

Matter argued and submitted. Court stated its findings, and Ordered, Motion DENIED WITHOUT PREJUDICE.

Counsel for Plaintiff to prepare the Order, circulating to all counsel for approval as to form and content.

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**October 13, 2016**

A-14-694084-C RLP-Brier Creek LLC, Plaintiff(s)
vs.
Green Tree Servicing LLC, Defendant(s)

October 13, 2016 **10:15 AM** **Pre Trial Conference**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Bean, Gregory S.	Attorney
Lowell, Elizabeth B.	Attorney
Miskey, Thomas	Attorney
Starbuck, Drew	Attorney

JOURNAL ENTRIES

- PRE TRIAL CONFERENCE

Court noted stipulation received late yesterday. Mr. Bean states motions for summary judgments were denied without prejudice, requests additional discovery and briefing to show there is no material issues of fact and also requests continuance of trial. All parties stipulate. Upon Court's inquiry, Mr. Bean states his motion, Defendant/Counterclaimant Ditech Financial LLC's Motion for Leave to Submit Supplemental Briefing and Seek Reconsideration, which is set for hearing on 11/1/16 was filed prior to the Stipulation, states stipulation would obviate the need for the motion. Further statements by Mr. Bean. Statements by Ms. Lowell. Statements by Mr. Miskey.
Matter trailed.
Matter recalled.
Further discussion. COURT ORDERED, Calendar Call and Trial Date VACATED and RESET. Court DIRECTED counsel to prepare a Stipulation that is consistent with the March 2017 stack. Per request of Mr. Bean, COURT ORDERED, Defendant/Counterclaimant Ditech Financial LLC's Motion for Leave to Submit Supplemental Briefing and Seek Reconsideration is WITHDRAWN.

2/9/17 10:15 AM PRE TRIAL CONFERENCE

3/7/17 9:00 AM CALENDAR CALL

3/13/17 9:00 AM BENCH TRIAL (STACK)

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**February 09, 2017**

A-14-694084-C RLP-Brier Creek LLC, Plaintiff(s)
vs.
Green Tree Servicing LLC, Defendant(s)

February 09, 2017 **10:15 AM** **All Pending Motions**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Kory Schlitz

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Bao, Andrew A.	Attorney
Lowell, Elizabeth B.	Attorney
Miskey, Thomas	Attorney
Starbuck, Drew	Attorney

JOURNAL ENTRIES

- PRE TRIAL CONFERENCE... DEFENDANT/ COUNTERCLAIMANT DITECH FINANCIAL LLC'S RENEWED MOTION FOR SUMMARY JUDGMENT...

COURT ORDERED, matter CONTINUED.

CONTINUED TO: 2/10/17 9:00 A.M.

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**February 10, 2017**

A-14-694084-C RLP-Brier Creek LLC, Plaintiff(s)
vs.
Green Tree Servicing LLC, Defendant(s)

February 10, 2017 **9:00 AM** **All Pending Motions**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Kory Schlitz

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Bao, Andrew A.	Attorney
Lowell, Elizabeth B.	Attorney
Miskey, Thomas	Attorney
Starbuck, Drew	Attorney

JOURNAL ENTRIES

- PRE TRIAL CONFERENCE... DEFENDANT/COUNTERCLAIMANT DITECH FINANCIAL LLC'S RENEWED MOTION FOR SUMMARY JUDGMENT...

Mr. Bao argued in support of the Motion, stating the tender in this case in undisputed, and the amount of the nine month super priority was tender to the HOA agent in this case, there is evidence it was cashed and reflected in the records. Mr. Bao requested the Motion be granted. Mr. Miskey argued against the Motion, stating opposing Counsel failed to notice there was a separate Notice of Default recorded in 2013, which is the first statutorily required step to enforcing an HOA lien, which also creates a new super priority lien. Ms. Lowell argued the HOA acted in good faith and followed the statue and did provide notice. Further arguments by Mr. Bao. COURT STATED ITS FINDINGS and ORDERED, Motion DENIED WITHOUT PREJUDICE. Colloquy regarding trial dates. Upon Court's inquiry, Mr. Bao indicated 1-2 days for trial. COURT FURTHER ORDERED, trial date VACATED and RESET. Court directed parties to file their Pre-Trial Memorandum on or before March 10, 2017, end of business.

3/14/17 9:00 A.M. CALENDAR CALL

3/20/17 9:00 A.M. BENCH TRIAL

3/21/17 11:00 A.M. BENCH TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**March 14, 2017**

A-14-694084-C RLP-Brier Creek LLC, Plaintiff(s)
vs.
Green Tree Servicing LLC, Defendant(s)

March 14, 2017 **9:00 AM** **Calendar Call**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Bao, Andrew A.	Attorney
Foley-Peak, Brigette E.	Attorney
Miskey, Thomas	Attorney
Robbins, Robert T.	Attorney
Starbuck, Drew	Attorney

JOURNAL ENTRIES

- CALENDAR CALL

Court noted it received an OST for an order to allow a trial witness Douglas Miles to appear via video conference. All counsel waived the one day judicial notice and will advance to this date as an oral motion. All counsel present state no objection. Court GRANTS request with Caveat; movant must timely fill out appropriate form that is required and do all that is required as stated on the form.
Court notes findings of fact and conclusions of law are due 2 days before trial.
Mr. Starbuck states the parties are in the process of doing a stipulation and order to dismiss Republic Services.
Court notes it will hear the notice of intent to offer on the first day of trial. Joint exhibits provided to the Clerk, nothing admitted at this time.

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**March 20, 2017**

A-14-694084-C RLP-Brier Creek LLC, Plaintiff(s)
vs.
Green Tree Servicing LLC, Defendant(s)

March 20, 2017 **9:00 AM** **Bench Trial**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Phyllis Irby

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Bao, Andrew A.	Attorney
Foley-Peak, Brigette E.	Attorney
Lowell, Elizabeth B.	Attorney
Miskey, Thomas	Attorney
Robbins, Robert T.	Attorney

JOURNAL ENTRIES

- COURT ORDERED, EXCLUSIONARY RULE INVOKED AT TIME OF TESTIMONY.

Parties stipulated that Fanny Mae is the owner of the note (Deed of Trusts).

Testimony and exhibits presented (see worksheets)

PLAINTIFF RESTED.

Testimony and exhibits presented by Deft's (see worksheets).

The Court recessed for the evening. COURT ORDERED, TRIAL CONTINUED.

3-21-17 11:00 AM BENCH TRIAL (DEPT. XXXI)

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**March 21, 2017**

A-14-694084-C RLP-Brier Creek LLC, Plaintiff(s)
vs.
Green Tree Servicing LLC, Defendant(s)

March 21, 2017 **10:30 AM** **Bench Trial**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Bao, Andrew A.	Attorney
Foley-Peak, Brigette E.	Attorney
Lowell, Elizabeth B.	Attorney
Miskey, Thomas	Attorney
Robbins, Robert T.	Attorney

JOURNAL ENTRIES

- BENCH TRIAL CONTINUES

Stipulation to Amend the Caption FILED IN OPEN COURT.

Testimony and exhibits presented. (see worksheets)

Lunch Break.

Further testimony.

Counter Defendant Silverstone Ranch Community Association rested.

Closing arguments.

Court stated its findings, and ORDERED, JUDGMENT FOR DEFENDANT DITECH FINANCIAL LLC with regard to Plaintiff's claim, and JUDGMENT FOR SILVERSTONE RANCH COMMUNITY ASSOCIATION with respect to the cross claims of Ditech Financial LLC fka Green Tree Servicing LLC.

Ms. Foley to prepare and submit the findings of fact and conclusions of law, circulating to all, within the next 30 days.

COURT FURTHER ORDERED, all exhibits not offered or admitted returned to counsel.

EXHIBIT(S) LIST

Case No.: **A694084**

Trial Date: 3-20-2017

Dept. No.: **XXXI**

Judge: JOANNA KISHNER

Court Clerk: PHYLLIS IRBY / SANDRA HARRELL

Plaintiff: **RLP-BRIER CREEK LLC**

Recorder: RACHELLE HAMILTON

Counsel for Plaintiff:

T. Miskey

vs.

Defendant: **GREEN TREE SERVICING LLC**

Counsel for Defendant: B. Foley / A. Bao (Ditech)

E. Lowell / R. Robbins (Silverstone Ranch)

TRIAL BEFORE THE COURT

JOINT EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
	SEE ATTACHED			
	JOINT TRIAL EXHIBIT LIST			
	COURT ORDERED, All exhibits not offered or admitted returned to counsel.			

EXHIBIT INDEX

JOINT TRIAL EXHIBITS **CASE NO. A-14-694084-C**

RLP-BRIER CREEK, LLC vs. GREEN TREE SERVICING LLC, et al.

#	DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
1	Deed of Trust, recorded January 4, 2008	3-20-17	STIP	3-20-17
2	Assignment of Deed of Trust to MERS, recorded February 24, 2009			
3	Notice of Delinquent Assessment Lien, recorded October 11, 2010			
4	Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien, recorded November 16, 2010			
5	Assignment of Deed of Trust to Bank of America, N.A., recorded September 29, 2011			
6	Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien, recorded March 25, 2013			
7	Assignment of Deed of Trust to Green Tree Servicing LLC, recorded May 29, 2013			
8	HOA Notice of Trustee's Sale, recorded July 31, 2013			
9	Substitution of Trustee, recorded September 3, 2013			
10	Notice of Default and Election to Sell Under Deed of Trust, recorded September 20, 2013			
11	Notice to Cure, recorded September 24, 2013			
12	Trustee's Deed Upon Sale, recorded October 11, 2013			
13	Notice of Trustee's Sale (Deed of Trust), recorded January 2, 2014			
14	Foreclosure Mediation Certificate, recorded January 2, 2014			
15	Notice of Lis Pendens, recorded January 16, 2014			
16	Notice of Delinquent Assessment Lien, recorded November 12, 2014			
17	Notice of Default and Election to Sell Under Notice of Delinquent Assessment Lien, recorded December 30, 2014			
18	Silverstone Ranch Community Association's CC&Rs (Bates numbers SILVER000001-375)			
19	Collection Agreement between Silverstone Ranch Community Association and Hampton and Hampton Collections (Bates numbers SILVER000376-377)			
20	Account Statement for 6845 Brier Creek Lane (Bates numbers SILVER000378-380)			

#	DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
21	Hampton & Hampton Collection File (Bates numbers SILVER000381-470)	3-20-17	STIP	3-20-17
22	Republic's Customer Invoices to Jeremy Sterling (Bates numbers REP-00001 to REP-00068)			
23	Notices of Republic Services' Liens against subject property (Bates numbers REP-00069 to REP-00079)			
24	Documents from MERS to BAC-Home Loans Servicing, LP, stamped received on December 6, 2010, with letter from Hampton & Hampton, Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien and Fair Debt Notice attached (Bates numbers GTS 000064-68)			
25	Letter from Hampton & Hampton, dated March 28, 2013, and stamped "received" on April 15, 2013, regarding Notice of Default and Election to Sell Real Property and Fair Debt Letter (Bates numbers GTS 000084-87)			
26	Letter from Hampton & Hampton to Green Tree dated August 16, 2013, regarding payoff demand and statement of account (Bates numbers GTS 000088-93)			
27	Wire payout request from BANA to Miles Bauer Bergstrom & Winters LLP to pay Silverstone Ranch Community Association re HOA delinquency in the amount of $463.50 (Bates number GTS 000094)			
28	Notice of Lien Based on Judgment recorded on December 28, 2011, in the Official Records of Clark County, Nevada as Instrument Number 2011122800000948 (Bates numbers GTS 000097-98)			
29	Fannie Mae LL-2015-04 Letter dated September 16, 2015 (Bates numbers GTS 000099)			
30	Servicer Reliance on the Housing and Economic Recovery Act of 2008 in Foreclosures Involving Homeownership Associations dated August 28, 2015 (Bates numbers GTS 000100)			
31	Statement of the Federal Housing Finance Agency on Certain Super-Priority Liens dated December 22, 2014 (Bates numbers GTS 000101-103)			
32	Statement on HOA Super-Priority Lien Foreclosures dated April 21, 2015 (Bates number GTS 000104)			
33	Fannie Mae Single Family Servicing Guide (Bates numbers GTS 000105-001218)			
34	Fannie Mae Property Information (Bates number GTS 001219)	3-20-17	NO	3-20-17

#	DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
35	Fannie Mae Acquisition Information (Bates number GTS 001220)	3-20-17	Y	3-20-17
36	Fannie Mae Service Transfer Information (Bates number GTS 001221)	3-21-17	N	3-21-17
37	Fannie Mae Loan Activity Information (Bates numbers GTS 001222-1230)	3-20-17	Y	3-20-17
38	Ditech Property Information (Bates number GTS 001231)	Returned		
39	Fannie Mae Schedules of Mortgages (Bates numbers GTS 001232-1297)	3-20-17	Y	3-20-17
40	Supplemental Declaration to Declaration of Covenants, Conditions & Restrictions for Silverstone Ranch, recorded August 5, 2008, as Instrument Number 200808050001901, in the Official Records of Clark County, Nevada (Bates numbers GTS 001298-1303)	3-20-17	STIP	3-20-17
41	Substitution of Trustee, recorded November 28, 2012, as Instrument Number 201211280001151, in the Official Records of Clark County, Nevada (Bates numbers GTS 001304-1305)			
42	Notice of Breach and Default and of Election to Cause Sale of Real Property Under Deed of Trust, recorded February 22, 2013, as Instrument Number 201302220002164, in the Official Records of Clark County, Nevada (Bates numbers GTS 001306-1313)			
43	Notice of Rescission of Notice of Default, recorded May 2, 2013, as Instrument Number 201305020000543, in the Official Records of Clark County, Nevada (Bates numbers GTS 001314-1315)			
44	Note dated December 31, 2007 (Bates numbers GTS 001321-1323)			
45	Silverstone Ranch Account History Report, dated February 4, 2013			
46	Hamptons & Hamptons Collections LLC Statement of Account, dated December 4, 2013			
47	Check from Miles Bauer Bergstrom Winters LLP to Hampton & Hampton Trust			
48	Letter from Green Tree to Jeremy J. Sterling, dated May 3, 2013, regarding transfer of service			
49	2012 Fannie Mae Servicing Guide, publicly available at https://www.fanniemae.com/content/guide/svc031412.pdf (Bates numbers Fannie Mae_00001-1209)			

#	DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
50	Fannie Mae LAM Transaction Detail (Bates numbers GTS 001324-1326)	3-20-17	NO	3-20-17
51	Fannie Mae LAM Transaction Audit Trail Detail (Bates number GTS 001327)	3-20-17	NO	3-20-17
52	Title Policy (Bates numbers GTS 001328-1341)	3-20-17	STIP	3-20-17
53	Affidavit of Douglas Miles with accompanying business records from Miles Bauer Bergstrom & Winters LLP (Bates numbers GTS 001342-1356)			
54	Ditech Primary Account Information Detail (Bates number GTS 001357)			
55	Ditech's Expert Witness, Vance Randall's Curriculum Vitae			
56	Ditech's Expert Witness, Vance Randall's Appraisal			
57	Ditech's Expert Witness, Vance Randall's Appraiser Certificate	WITHDRAWN		
58	Ditech's Expert Witness, Vance Randall's Fee Schedule			
59	Ditech's Expert Witness, Vance Randall's Testimony List			
60	Fannie Mae and FHFA Websites and the Contents thereof, including the Fannie Mae Selling Guide (publicly available at https://www.fanniemae.com/content/guide/sel022817.pdf (current version); https://www.fanniemae.com/content/guide/sell02213.pdf (version at time of January 22, 2014 HOA sale)			

EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE

NOTICE OF DEFICIENCY

ON APPEAL TO NEVADA SUPREME COURT

J. CHARLES COONS, ESQ.
10655 PARK RUN DR., SUITE 130
LAS VEGAS, NV 89144

DATE: August 2, 2017
CASE: A-14-694084-C

RE CASE: RLP-BRIER CREEK, LLC, a Nevada series limited liability company of the container RED LIZARD PRODUCTIIONS, LLC under NRS 86.296 vs. GREEN TREE nka DITECH FINANCIAL, LLC; BAKEMARK WEST, LLC; JEREMY J. STERLING

NOTICE OF APPEAL FILED: July 31, 2017

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

☒ $250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
- If the $250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.

☐ $24 – District Court Filing Fee (Make Check Payable to the District Court)**

☒ $500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
- NRAP 7: Bond For Costs On Appeal in Civil Cases

☐ Case Appeal Statement
- NRAP 3 (a)(1), Form 2

☐ Order

☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada
County of Clark } **SS:**

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

RLP-BRIER CREEK, LLC, a Nevada series limited liability company of the container RED LIZARD PRODUCTIIONS, LLC under NRS 86.296,

Plaintiff(s),

vs.

GREEN TREE nka DITECH FINANCIAL, LLC; BAKEMARK WEST, LLC; JEREMY J. STERLING,

Defendant(s),

Case No: A-14-694084-C

Dept No: XXXI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 2 day of August 2017.

Steven D. Grierson, Clerk of the Court

Heather Ungermann, Deputy Clerk