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9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**

11 * * *

12 DITECH FINANCIAL LLC,
13 Plaintiff,
14 vs.
15 NORTHGATE HOMEOWNERS
ASSOCIATION; NEVADA ASSOCIATION
16 SERVICES, INC.; MARIA LOYO-
MORALES; KIMBERLY TIBONI, DOES 1-
17 10, inclusive,
18 Defendants.

CASE NO. 2:16-cv-02400-MMD-VCF

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW; ORDER
GRANTING DEFAULT JUDGMENT**

19
20 An Application having been duly made by Plaintiff, DITECH FINANCIAL LLC
21 (“Ditech”), for judgment against Defendants, NEVADA ASSOCIATION SERVICES, INC.
22 (“NAS”); MARIA LOYO-MORALES (“Loyo-Morales”); KIMBERLY TIBONI (“Tiboni”)
23 (collectively, the “Defaulting Defendants”), the defaults of said Defendants having been entered
24 for failure to answer or otherwise defend as to the Complaint for Declaratory Relief, to Quiet
25 Title to Real Property [ECF No. 1], it appearing that said Defendants are not in the military
26 service of the United States and are not infants or incompetent persons, the Court having
27 considered and accepted the evidence and argument in Ditech’s Application for Default
28 Judgment, and good cause appearing, the Court hereby finds as follows:

1 **I. FINDINGS OF FACT**

2 1. Ditech is a Delaware limited liability corporation with its principal place of
3 business in Florida, and the record beneficiary of a Deed of Trust on real property located at
4 5513 Oakwood Ridge Street, Las Vegas, Nevada 89130, Assessor's Parcel Number 125-36-516-
5 087 (the "Subject Property").

6 2. Defendant, NORTHGATE HOMEOWNERS ASSOCIATION ("Northgate"), was
7 at all relevant times, and continues to be, a homeowner's association doing business in Clark
8 County, Nevada.

9 3. Loyo-Morales and Tiboni are individuals and residents of Clark County, Nevada.

10 4. NAS was at all relevant times, and continues to be, a Nevada corporation doing
11 business in Clark County, Nevada.

12 5. On or about August 29, 2005, Tiboni obtained a mortgage loan from Guild
13 Mortgage Company in the amount of \$196,000.00 by signing a Note secured by a Deed of Trust
14 to the Subject Property. Mortgage Electronic Registration Systems, Inc. ("MERS") was named
15 as the beneficiary under the Deed of Trust as nominee for the Lender and the Lender's
16 successors and assigns.

17 6. On or about August 29, 2005, the Deed of Trust was recorded in the Official
18 Records of the Clark County Recorder as Instrument No. 200508290004454.

19 7. On or about April 22, 2010, MERS assigned all beneficial interest under the Deed
20 of Trust to The Bank of New York Mellon f/k/a The Bank of New York As Trustee for the
21 Certificateholders of the CWABS Inc., Asset-Backed Certificates Series 2005-13 ("BNY Mellon
22 as Trustee"). The Assignment was recorded on April 27, 2010 in the Official Records of the
23 Clark County Recorder as Instrument No. 201004270000286.

24 8. On August 31, 2015, BNY Mellon as Trustee assigned all beneficial interest
25 under the Deed of Trust to Green Tree Servicing, LLC n/k/a Ditech. The assignment was
26 recorded in the Official Records of the Clark County Recorder on October 2, 2015 as Instrument
27 No. 201510020004089.

28

1 9. On April 22, 2010, Tiboni filed Bankruptcy Petition Number 10-17124-lbr in the
2 United States Bankruptcy Court for the District of Nevada (Las Vegas).

3 10. Tiboni listed the Subject Property as a nonexempt asset in her Bankruptcy
4 Petition.

5 11. The bankruptcy case remained open and the Subject Property was an asset of the
6 estate protected by the automatic stay under 11. U.S.C. § 362(a) until the bankruptcy was closed
7 on May 17, 2011.

8 12. The Subject Property is located in a common-interest community overseen by
9 Northgate, and is subject to the applicable covenants, conditions, and restrictions which require
10 the payment of periodic assessments by homeowners.

11 13. Northgate, through its foreclosure agent recorded the Notice of Delinquent
12 Assessment Lien on December 10, 2010, and the Notice of Default on February 11, 2011 during
13 the pendency of the bankruptcy and without relief from the automatic stay.

14 14. Northgate sold the Subject Property to Loyo-Morales via foreclosure sale on or
15 about November 9, 2012. The purchase price of the property at the foreclosure sale was
16 \$6,000.00.

17 15. On November 15, 2012, a foreclosure deed was recorded in the Official Records
18 of the Clark County Recorder as Instrument No. 201211150002637. The recitals in the
19 Foreclosure Deed stated that the conveyance of the Subject Property was made pursuant to the
20 December 10, 2010 Notice of Delinquent Assessment and the February 11, 2011 Notice of
21 Default.

22 **II. CONCLUSIONS OF LAW**

23 1. This Court has subject matter jurisdiction over the issues set forth in the
24 Complaint for Declaratory Relief, to Quiet Title to Real Property [ECF No. 1] (the "Complaint").

25 2. Venue is proper in this Court.

26 3. Ditech has asserted claims for relief against the Defaulting Defendants for
27 declaratory relief and quiet title.
28

1 4. Ditech is the holder of a first position Deed of Trust on the Subject Property as
2 against all other claimants.

3 5. The November 9, 2012 Foreclosure Sale of the Subject Property was void ab
4 initio based on the violations of the automatic stay pursuant to 11 USC sec. 362. Therefore, the
5 November 9, 2012 Foreclosure Sale did not impair, affect, terminate or extinguish the rights of
6 Ditech as the holder of a first position deed of trust protected by the provisions of NRS
7 116.3116(2).

8 6. The Court quiets title regarding all rights, claims, ownership, liens, titles, and
9 demands of all Defendants subject to Ditech's interest in the Note and Deed of Trust and hereby
10 declares the sale void pursuant to 11 USC sec. 362.

11 7. Northgate retains all other rights and claims pursuant to the Conditions,
12 Covenants and Restrictions and Nevada law against the Subject Property for any current or
13 future violations, or payment delinquencies as may exist.

14 8. Courts also look at the following seven discretionary factors before rendering a
15 decision on default judgment: 1) the possibility of prejudice to the plaintiff; 2) the merits of
16 plaintiff's substantive claim; 3) the sufficiency of the complaint; 4) the sum of money at stake in
17 the action; 5) the possibility of a dispute concerning material facts; 6) whether the default was
18 due to excusable neglect; and 7) the strong policy underlying the Federal Rules of Civil
19 Procedure favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir.
20 1986) (citation omitted).

21 9. The first *Eitel* factor, the possibility of prejudice to Ditech, favors entering default
22 judgment because if the Court were to deny default judgment, then prejudice to Ditech would
23 result as Ditech would be left with the Stipulated Judgment [ECF No. 58] against Northgate
24 regarding the property without a resolution as to potential claims from the Defaulting Defendants
25 regarding ownership and their respective lien rights.

26 10. The second *Eitel* factor, the merits of Ditech's substantive claim, also favors
27 entering default judgment as Ditech's claims are based on both United States Bankruptcy Code
28 11 USC sec. 362, Nevada statutory law, including NRS 30.030 (right to declaratory judgments),

1 NRS 116.3102 (limitations on powers of HOAs), and NRS 116.31162-116.31168 (insufficient
2 notices).

3 11. The third *Eitel* factor, the sufficiency of the Complaint, also favors entering
4 default judgment as Ditech's Complaint comports with FRCP 8(a), (d), (e) and FRCP 10.

5 12. The fourth *Eitel* factor, the sum of money at stake in the action, also favors
6 entering default judgment because there is no sum of money at stake in the instant action.

7 13. The fifth *Eitel* factor, the possibility of a dispute concerning material facts, also
8 favors entering default judgment because the Defaulting Defendants had every opportunity to
9 answer the Complaint and dispute any allegation therein and the subject recorded documents are
10 a matter of public record.

11 14. The sixth *Eitel* factor, whether the Default was due to excusable neglect, also
12 favors entering default judgment because none of the Defaulting Defendants have since
13 challenged same.

14 15. The seventh *Eitel* factor, the strong policy underlying the Federal Rules of Civil
15 Procedure favoring decisions on the merits, also favors entering default judgment because a
16 decision on the merits would likely result in a judgment against the Defaulting Defendants and
17 FRCP 1 mandates that the Rules, including FRCP 55(b), "be construed, administered, and
18 employed by the court and the parties to secure the just, speedy, and inexpensive determination
19 of every action and proceeding."

20 16. In sum, all seven *Eitel* factors favor entering default judgment against the
21 Defaulting Defendants.

22 **III. JUDGMENT**

23 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Application for
24 Default Judgment is GRANTED against the following Defendants: NEVADA ASSOCIATION
25 SERVICES, INC.; MARIA LOYO-MORALES; and KIMBERLY TIBONI (collectively, the
26 "Defaulting Defendants");
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IT IS FURTHER ORDERED that Ditech's claim against the Defaulting Defendants for Declaratory Relief is GRANTED based on this Court's finding that the sale of the Subject Property is void for violations of United States Bankruptcy Code 11 USC sec. 362;

IT IS FURTHER ORDERED that Ditech's claim against the Defaulting Defendants for Quiet Title is GRANTED based on this Court's finding that the sale of the Subject Property is void for violations of United States Bankruptcy Code 11 USC sec. 362; and

JUDGMENT IS HEREBY ENTERED in favor of Ditech and against the Defaulting Defendants.

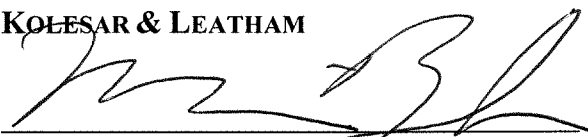
DATED this 12th day of June, 2018.



U.S. DISTRICT COURT JUDGE

Respectfully submitted by:

KOLESAR & LEATHAM



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