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7	Attorney for defendant Saticoy Bay LLC Series 8891 Sanibel Shore Avenue					
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9	UNITED STATES DISTRICT COURT					
10	DISTRICT OF NEVADA					
11	DITECH FINANCIAL LLC a Delaware	CASE NO.:	2:18-cv-00250-RFB-BNW			
12	Corporation,					
13	Plaintiff,					
14	VS.					
15	CLEARWATER COVE HOMEOWNERS ASSOCIATION, a Nevada non-profit					
16	corporation; SATICOY BAY LLC SERIES 8891 SANIBEL SHORE AVENUE, a Nevada					
17	corporation, RED ROCK FINANCIAL					
	SERVICES, a Nevada corporation,					
18	Defendant.					
19						
20	ORDER ON MOTION FOR	<u>R SUMMARY</u>	<u>JUDGMENT</u>			
21	The motion of defendant Saticoy Bay LLC Series 8891 Sanibel Shores Avenue for summary					
22	judgment (ECF No. 37), and the joinder of Clearwater Cove Homeowners Association (ECF No. 40)					
23	having come before the court on the 25 th day of July 2019, Andrew A. Bao, Esq. appearing on behalf of					
24	plaintiff Ditech Financial, LLC, Michael F. Bohn, Esq. appearing on behalf of defendant Saticoy Bay					
25	LLC Series 8891 Sanibel Shores Avenue, and Margaret E. Schmidt, Esq. appearing on behalf of					
26	defendant Clearwater Cove Homeowners Association, and the court having reviewed the motions for					
27	summary judgment, joinder, oppositions to the motion, and reply and having heard the arguments of					
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1	counsel, finds as follows.			
2	FINDINGS OF FACT			
3	1. The property in issue in this case is the residential real property commonly known as 8891			
4	Sanibel Shore Avenue, Las Vegas, Nevada and further identified by Assessor's Parcel Number 163-17-			
5	719-059. (hereinafter referred to as the "Property").			
6	2. The Property is encumbered by CC&R's in favor of defendant Clearwater Cove Homeowners			
7	Association.			
8	3. Plaintiff Ditech Financial is the beneficiary of a deed of trust which was recorded as an			
9	encumbrance to the Property.			
10	4. The former owner of the Property is Joshua C. Cheng.			
11	5. Joshua C. Cheng became delinquent in the assessments owed to defendant Clearwater Cove			
12	Homeowners Association.			
13	6. Red Rock Financial Services was the collection agent acting on behalf of Clearwater Cove			
14	Homeowners Association.			
15	7. Red Rock Financial Services acting on behalf of Clearwater Cove Homeowners Association			
16	began foreclosure proceedings against the property pursuant to NRS Chapter 116.			
17	8. On December 14, 2017 the foreclosure sale was conducted, and the property was purchased			
18	by Saticoy Bay LLC Series 8891 Sanibel Shore Avenue for the total sum of \$90,100.00.			
19	9. A certificate of sale was recorded with the Clark County Recorders office on December 19,			
20	2017.			
21	10. The 60 day period to redeem the property pursuant to NRS 116.31163(3) ended on Monday,			
22	February 12, 2018.			
23	11. The first communication that was made by plaintiff Ditech regarding redemption of the			
24	property was on Thursday February 8, 2018, only two working days before the expiration of the			
25	redemption period.			
26	12. On Friday, February 9, 2018, counsel for Ditech emailed counsel for Saticoy Bay LLC			
27	requesting an extension of the 60 day redemption period.			
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1	13. On Sunday, February 11, 2018, counsel for Saticoy Bay LLC emailed counsel for Ditech to
2	advise of the costs which would be claimed by Saticoy Bay LLC in the redemption amount.
3	14. In response to the February 11, 2018 email, counsel for Ditech again emailed requesting an
4	extension of the period of redemption.
5	15. On February 12, 2018, the last date for redemption, counsel for Ditech requested counsel for
6	Saticoy Bay confirm the amount needed to be tendered in order to redeem the property and proposed an
7	amount it believed sufficient to redeem the property.
8	16. On February 16, 2018, after the expiration of the date for redemption, counsel for Ditech
9	again requested that counsel for Saticoy Bay confirm the proposed redemption amount.
10	17. On February 19, 2018, after the expiration of the date for redemption, counsel for Saticoy Bay
11	simply stated it would not accept Ditech's offer of tender without explanation.
12	18. Plaintiff Ditech failed to deliver a check in any amount to pay for the redemption before the
13	redemption deadline.
14	CONCLUSIONS OF LAW
15	1. The court finds as a matter of law that plaintiff Ditech Financial failed to timely tender the
16	amount necessary to redeem its interest in the property within 60 days as required by NRS 116.3116(3)
17	due to the delayed actions of plaintiff rather than any actions taken by defendants.
18	2. As a result of the failure of plaintiff Ditech to timely pay to redeem the property, Ditech
19	Financial is not entitled to a preliminary injunction or other injunctive relief which would delay or impede
20	delivery of a deed to Saticoy Bay pursuant to NRS 116.31166(7)(a).
21	3. There is no basis to equitably toll the date for redemption or to otherwise excuse the failure
22	of plaintiff Ditech to timely redeem the property.
23	4. The court also finds that the foreclosure does not amount to a takings under the U.S.
24	Constitution and that the foreclosure was not barred by the Supremacy Clause due to the FHA Insurance
25	Program.
26	///
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1	<u>ORDER</u>				
2	BASED ON THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED				
3	that the motion for summary judgment on behalf of Saticoy Bay LLC Series 8891 Sanibel Shore is				
4	granted.				
5	IT IS FURTHER ORDERED that judgment is entered in favor of defendants on all of plaintiff				
6	Ditech Financial's claims and Saticoy Bay LLC Series 8891 Sanibel Shore's counterclaims.				
7	IT IS FURTHER ORDERED that defendants Clearwater Cove Homeowners Association and/or				
8	its collection agent, Red Rock Financial Services may issue an appropriate foreclosure deed to defendant				
9	Setiens Devil I C. Series 8801 Series Asserve				
10	DATED this <u>26th</u> day of <u>September</u> , 2019				
11	R				
12					
13	RICHARD F. BOULWARE, II UNITED STATES DISTRICT JUDGE				
14	Respectfully submitted by: Reviewed by:				
15	LAW OFFICES OF TYSON & MENDES LLP				
16	MICHAEL F. BOHN, ESQ., LTD.				
17	By: /s/ /Michael F. Bohn, Esq./ By: /s/ /Margaret E. Schmidt, Esq./				
18	Michael F. Bohn, Esq.Margaret E. Schmidt, Esq.2260 Corporate Circle, Suite 4803960 Howard Hughes Parkway, Suite 600				
19	Henderson, Nevada 89074Las Vegas, NV 89169Attorney for defendant Saticoy Bay LLCAttorneys for defendant Clearwater Cove				
20	Reviewed by:				
21	WOLFE & WYMAN, LLP				
22					
23	By: <u>/s/ /Andrew A. Bao, Esq./</u>				
24	Andrew A. Bao, Esq. 6757 Spencer Street				
25	Las Vegas, NV 89119 Attorney for plaintiff Ditech Financial, LLC				
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