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At a special term of the Supreme Court of the State of New York, County of Erie, held at 92 Franklin Street, Buffalo, New York on January 15, 2009

PRESENT: HON. JOHN M. CURRAN
Justice of the Supreme Court

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

THE CITY OF BUFFALO,
BYRON W. BROWN, as Mayor of the City of Buffalo,

Plaintiffs,

v.

ABN AMRO MORTGAGE GROUP, INC., et al.,

Defendants.

**ORDER**

Index No.: I-2008-2200

Motions to dismiss having been made by Defendants as set out below, and the motions having regularly come to be heard at a Special Term of this Court held at 92 Franklin Street, Buffalo, New York, on January 15, 2009, and proof of service of the motions having been made;

NOW, upon reading and filing of the Notice of Motion, dated August 15, 2008, of Defendants Bank of America, N.A. (re 1 Ruhland), NationsCredit Financial Services Corporation (re 562 High), The Bank of New York Mellon, incorrectly named herein as Bank of New York Trust, as Trustee of the EQCC Trust 2001-1F (re 508 Dodge), and The Bank of New York Mellon, as successor-in-interest to JPMorgan Chase Bank, as Trustee for Mortgage Pass-Through Certificates Series 2001-3 (re 203 Strauss), together with the Affidavit of Timothy W. Hoover, sworn to August 15, 2008, and the exhibits attached thereto, and the Affidavit of

MaryEileen Kennedy, sworn to August 14, 2008, and the exhibits attached thereto, and the Affidavit of Samantha J. Dombrowski, dated August 15, 2008, and the exhibits attached thereto, and Defendants' Joint Memorandum of Law, dated August 15, 2008, and the Joint Affidavit of Samantha J. Dombrowski, sworn to August 15, 2008, and the exhibits attached thereto, and Defendants' Joint Reply Memorandum, dated December 24, 2008, all in support of said Defendants' Notice of Motion and the motions of all Defendants; the Notice of Motion, dated August 15, 2008, of Defendant The Bank of New York Trust Company, National Association, successor-in-interest to Chase Manhattan Bank, as Trustee of the IMC Home Equity Loan Trust 1998-6 (improperly sued as The Chase Manhattan Bank (n/k/a JP Morgan Chase Bank, National Association)) (re 1941 Niagara), together with the Affidavit of R. Anthony Rupp III, sworn to August 15, 2008, and exhibits attached thereto, and the Reply Affidavit of R. Anthony Rupp III, sworn to December 24, 2008; the Notice of Motion, dated August 15, 2008, of Defendant First Union National Bank (n/k/a Wachovia Bank of Delaware) (re 420 East Ferry), together with the Affidavit of R. Anthony Rupp III, sworn to August 15, 2008, and the exhibits attached thereto, and the Reply Affidavit of R. Anthony Rupp III, sworn to December 24, 2008; the Notice of Motion, dated August 15, 2008, of Defendant Deutsche Bank National Trust Company (f/k/a Bankers Trust of California, N.A.) as Trustee of Aames Mortgage Trust 2002-1 Mortgage Pass-Through Certificates, Series 2002 c/o Ocwen Loan Servicing, LLC (re 223 Stanislaus), together with the Affidavit of Marco Cercone, sworn to August 15, 2008, and exhibits attached thereto, and Defendant's Memorandum of Law, dated August 15, 2008, and the Reply Affidavit of Marco Cercone, sworn to December 24, 2008; the Notice of Motion, dated August 15, 2008, of Defendant The Bank of New York, as successor to JPMorgan Chase Bank, N.A., as Trustee for the registered holders of ABFS Mortgage Loan Trust 2002-2 Mortgage Pass-Through

Certificates, Series 2002-2 (re 1477 Delevan), together with the Affidavit of Marco Cercone, sworn to August 15, 2008, and exhibits attached thereto, and Defendant's Memorandum of Law, dated August 15, 2008, and the Reply Affidavit of Marco Cercone, sworn to December 24, 2008; the Notice of Motion, dated August 15, 2008, of Defendant Mortgage Electronic Registration Systems, Inc., as Nominee for BNC Mortgage, Inc., a Delaware Corporation (re 53 Victoria), together with the Affidavit of Marco Cercone, sworn to August 15, 2008, and exhibits attached thereto, and Defendant's Memorandum of Law, dated August 15, 2008, and the Reply Affidavit of Marco Cercone, sworn to December 24, 2008; the Notice of Motion, dated August 15, 2008, of Defendant Countrywide Home Loans, Inc. as servicer, and Aurora Loan Services, LLC as master servicer, acting for Deutsche Bank National Trust Company (f/k/a Bankers Trust Company of California), as Trustee (re 276 Detroit, 1418 Bailey, 496 Fillmore, 234 Strauss, 220 Schuele, 19 Marigold, and 312 Koons), together with the Attorney's Statement of Kenneth C. Rudd, sworn to August 15, 2008, and the exhibits attached thereto, and the Affidavit of Erin Abugow, sworn to August 14, 2008, and the exhibits attached thereto, and the Affidavit of Deborah Lenhart, sworn to August 14, 2008, and the exhibits attached thereto, and the Attorney's Statement of Kenneth C. Rudd, sworn to December 24, 2008, and the exhibits attached thereto; the Notice of Motion, dated August 15, 2008, of Defendant EMC Mortgage Group Corporation (re 16 Roebling), together with the Affidavit of David B. Smith, sworn to August 15, 2008, and the exhibits attached thereto; the Notice of Motion, dated August 15, 2008, of Defendants Bankers Trust Company of California, N.A. (n/k/a Deutsche Bank National Trust Company), as Trustee only c/o EMC Mortgage Corporation (re 83 Texas), and Mortgage Electronic Registration Systems, Inc. "MERS" as a nominee for BNC Mortgage, Inc., its successors and assigns c/o Chase Home Finance LLC (re 99 Schuele), together with Defendants'

Memorandum of Law, dated August 15, 2008, and the Affidavit of David B. Smith, sworn to December 23, 2008, and the exhibits attached thereto; the Notice of Motion, dated August 15, 2008, of Defendants Citibank, N.A. (re 115 Walter), Citifinancial, Inc. (re 15 Theodore, and 49 Wende), Citimortgage, Inc. individually (re 349 Moselle, and 12 Roebling), Citimortgage, Inc. as successor by merger to ABN AMRO Mortgage, Group, Inc. (re 1757 Bailey, and 1215 Fillmore), Citimortgage, Inc. as successor by merger to Citifinancial Mortgage Company, Inc. (re 315 Koons and 21 Titus), together with the Affidavit of Randall D. White, sworn to August 15, 2008, and the exhibits attached thereto, and the Affidavit of Lynn M. Bochenek, sworn to August 15, 2008, and the exhibits attached thereto, and the Affidavit of David Schwartzberg, sworn to August 13, 2008, and the exhibits attached thereto, and Defendants' Supplemental Memorandum of Law, dated August 15, 2008, and the Second Affidavit of Lynn M. Bochenek, sworn to December 24, 2008, and the exhibits attached thereto, and Defendants' Supplemental Reply Memorandum of Law, dated December 24, 2008; the Notice of Motion, dated August 15, 2008, of Defendant Credit Based Asset Servicing and Securitization, LLC (re 57 Wasmuth), together with the Affidavit of Franklin W. Heller, sworn to August 13, 2008, and the exhibits attached thereto, and the Affidavit of Bruce Williams, sworn to August 13, 2008, and the Affidavit of Mark Gaston Pearce, sworn to August 13, 2008, and the Reply Statement of Franklin W. Heller, sworn to December 24, 2008, and the exhibits attached thereto; the Notice of Motion, dated August 15, 2008, of Defendants Washington Mutual Bank (re 58 Krupp), Long Beach Mortgage Company (re 199 Zenner), and Deutsche Bank National Trust Company, as Trustee only c/o Washington Mutual Bank as servicer (re 78 Lark), together with the Affirmation of David H. Nelson, sworn to August 14, 2008, and the exhibits attached thereto, and Defendants' Memorandum of Law, dated August 14, 2008, and Defendants' Reply Memorandum of Law, dated December 24, 2008; the Notice of Motion, dated August 11, 2008, of Defendant Cityscape Corp. (re 176 Congress), together with the Affirmation of Andrew Morganstern, dated August 11, 2008, and the exhibits attached thereto, and the Affidavit of Shelly Codner, sworn to May 8, 2008, and the exhibits attached thereto, and Defendant's Memorandum of Law, dated August 11, 2008, and Defendant's Reply Memorandum of Law, dated December 23, 2008; the Notice of Motion, dated April 14, 2008, of Defendant Beal Bank, F.S.B. (sued herein as Beal Bank, S.S.B.) (re 188 Dewitt), together with the Affirmation of Dean M. Drew, sworn to April 14, 2008, and the exhibits attached thereto, and the Affidavit of Robert M. Ackerman, sworn to April 14, 2008, and the exhibits attached thereto, and Defendant's Brief, dated April 11, 2008, and the Amended Notice of Motion, dated April 15, 2008, and Defendant's Reply Brief, dated December 24, 2008; the Notice of Motion, dated April 11, 2008, of Defendant Alden State Bank (re 15 Newton), together with the Affidavit of Michael A. Brady, sworn to April 11, 2008, and the exhibits attached thereto, and the Affidavit of Steven Woodward, sworn to April 11, 2008, and the exhibits attached thereto, and the Affidavit of Peter A. Muth, sworn to April 9, 2008, and the exhibits attached thereto; the Notice of Motion, dated April 14, 2008, of Defendant Centex Home Equity Company LLC (n/k/a Nationstar Mortgage, LLC) (re 278 Brinkman), together with the Affidavit of Leslie Mark Greenbaum, sworn to April 14, 2008, and the exhibits attached thereto, and Defendant's Memorandum of Law, dated April 14, 2008, and Defendant's Reply Memorandum of Law, dated December 23, 2008; the Notice of Motion, dated April 14, 2008, of Defendant Sand Canyon Corporation (f/k/a Option One Mortgage Corporation) (re 428 Curtis), together with the Affidavit of Leslie Mark Greenbaum, sworn to April 14, 2008, and the exhibits attached thereto, and Defendant's Memorandum of Law, dated April 14, 2008; the Notice of Motion, dated August 15, 2008, of Defendant Household Finance Realty Corporation of New

York, successor in interest to Mortgage Electronic Registration Systems (re 101 Wyoming), together with the Affidavit of Renee M. Root, sworn to August 14, 2008, and the exhibits attached thereto, and the Affidavit of Maria Vadney, sworn to August 14, 2008, and the exhibits attached thereto, and the Reply Affidavit of Renee M. Root, sworn to December 23, 2008, and the exhibits attached thereto; the Notice of Motion, dated August 15, 2008, of Defendant IndyMac Federal Bank, as successor in interest to IndyMac Bank, F.S.B. servicing agent for Bankers Trust Company of California, N.A. (n/k/a Deutsche Bank National Trust Company) as Trustee only for the Home Equity Mortgage Loan Asset-Backed Trust, Series SPMD 2000-C c/o IndyMac Bank Federal Bank, as successor in interest to IndyMac Bank F.S.B. (re 382 Moselle), together with the Affidavit of Marc J. Lifset, sworn to August 14, 2008, and the Affidavit of Christopher Moore, sworn to August 14, 2008, and the exhibits attached thereto, and the Reply Affidavit of Marc J. Lifset, sworn to December 23, 2008, and the exhibits attached thereto; Plaintiffs' Affidavit of Alisa A. Lukasiewicz in Opposition to Motions' to Dismiss, sworn to November 12, 2008, and the Affidavit of Donald E. Morris, sworn to November 10, 2008, and the exhibits attached thereto, all in opposition by Plaintiffs to Defendants' motions; and upon hearing O'Melveny & Myers LLP (Christopher D. Catalano, Esq., of counsel) in support of all Defendants' motions to dismiss, and upon hearing Zeichner Ellman & Krause LLP (Kenneth C. Rudd, Esq., of counsel), Rosicki & Rosicki Associations, P.C. (Deborah M. Gallo, Esq., of counsel), Drew & Drew, LLP (Dean M. Drew, Esq., of counsel), Gross, Shuman, Brizdle & Gilfillan, P.C. (Leslie Mark Greenbaum, Esq., of counsel), Damon & Morey, LLP (Franklin W. Heller, Esq., of counsel), Connors & Vilardo LLP (Randall D. White, Esq., of counsel), Mayer Brown LLP (Lucia Nale, Esq., of counsel), Rupp, Baase, Pfalzgraf, Cunningham & Coppola LLC (R. Anthony Rupp III, Esq., of counsel) and McGlinchey Stafford PLLC (Jeffrey P.

Barringer, Esq., of counsel), attorneys for various of the moving Defendants, in support of various moving Defendants' motions to dismiss, and upon hearing the Corporation Counsel of the City of Buffalo (Cindy T. Cooper, Esq., of counsel), attorney for Plaintiffs, in opposition to Defendants' motions to dismiss; and due deliberation having been had and the Court having rendered an oral decision on January 15, 2009 as reflected in the attached pages of the transcript of the January 15, 2009 proceeding, it is

ORDERED, that Defendants' motions to dismiss are hereby and in all respects GRANTED as to Plaintiffs' first cause of action, and Plaintiffs' first cause of action is dismissed, without prejudice, with leave for Plaintiffs to replead the first cause of action by March 31, 2009 with specific allegations consistent with the Court's ruling at attached page 81 of the transcript of the January 15, 2009 proceeding, and subject to renewal and/or filing of motions to dismiss any repleaded allegations, for the reasons stated in the Court's oral ruling on January 15, 2009 as reflected by the attached pages 80-81, 87-88 of the transcript of the January 15, 2009 proceeding; and it is further

ORDERED, that Defendants' motions to dismiss are hereby and in all respects GRANTED as to Plaintiffs' second cause of action, and Plaintiffs' second cause of action is dismissed, without prejudice, with leave for Plaintiffs to replead the second cause of action by March 31, 2009 with specific allegations consistent with the Court's ruling at attached pages 81 and 87 of the transcript of the January 15, 2009 proceeding, and subject to renewal and/or filing of motions to dismiss any repleaded allegations, for the reasons stated in the Court's oral ruling on January 15, 2009 as reflected by the attached pages 87-88 of the transcript of the January 15, 2009 proceeding; and it is further

ORDERED, that Plaintiffs' request to withdraw and for dismissal of Plaintiffs' third cause of action is GRANTED, and Plaintiffs' third cause of action is dismissed, with prejudice, as reflected by the attached page 82 of the transcript of the January 15, 2009 proceeding; and it is further

ORDERED, that Defendants' motions to dismiss based on statute of limitations grounds is DENIED, without prejudice and subject to renewal in the event that a further repleaded Complaint is filed by the Plaintiffs by March 31, 2009, as reflected by the Court's oral ruling as reflected by the attached pages 84-85, 88 of the transcript of the January 15, 2009 proceeding; and it is further

ORDERED, that Defendants' motions to sever each Defendant/property is DENIED, without prejudice and subject to renewal in the event that a further repleaded Complaint is filed by the Plaintiffs by March 31, 2009, as reflected by the Court's oral ruling as reflected by the attached page 82 of the transcript of the January 15, 2009 proceeding; and it is further

ORDERED, that Defendant Centex Home Equity Company, LLC n/k/a Nationstar Mortgage, LLC's motion to dismiss based on documentary evidence regarding 278 Brinkman is in all respects DENIED, as reflected by the Court's oral ruling as reflected by the attached page 85 of the transcript of the January 15, 2009 proceeding; and it is further

ORDERED, that the motion of Defendant The Bank of New York Trust Company, National Association, successor-in-interest to Chase Manhattan Bank, as Trustee of the IMC Home Equity Loan Trust 1998-6 (improperly sued as The Chase Manhattan Bank, n/k/a JP Morgan Chase Bank, National Association) to dismiss as to 1941 Niagara, Defendant First Union National Bank, n/k/a Wachovia Bank of Delaware's motion to dismiss as to 420 East

Ferry, Defendant CitiMortgage, Inc.'s motion to dismiss as to 349 Moselle, Defendant CitiMortgage, Inc, as successor by merger to Citifinancial Mortgage Company, Inc's motion to dismiss as to 21 Titus, Defendant's Countrywide Home Loans, Inc., as servicer acting for Deutsche Bank National Trust Company (f/k/a Bankers Trust Company of California, N.A.), as Trustee's motion to dismiss as to 496 Fillmore, are each GRANTED, with prejudice, on consent of counsel for Plaintiffs, as reflected by the attached pages 79-80 of the transcript of the January 15, 2009 proceeding; and it is further ordered

ORDERED, that Defendant Sand Canyon Corporation f/k/a Option One Mortgage Corporation's request to withdraw its motions as to 426 Curtis, because of a settlement between the parties, is GRANTED, as reflected by the attached pages 79-80 of the transcript of the January 15, 2009 proceeding.

DATED: Buffalo, New York
March 11th, 2009

HON. JOHN M. CURRAN

ENTER:

**GRANTED**

MAR 11 2009

BY Patricia A. Aiello
PATRICIA A. AIELLO
COURT CLERK

STATE OF NEW YORK                COUNTY OF ERIE
SUPREME COURT                    PART 4
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THE CITY OF BUFFALO,
BYRON W. BROWN,
As Mayor of the City of Buffalo

Plaintiffs                    Index No. 2200/2008

vs.                           Oral Argument and Decision of the Court

ABN AMRO MORTGAGE GROUP, INC.,
ALDEN STATE BANK,
AMERICAN BUSINESS CREDIT, INC.,
AMERIQUEST MORTGAGE COMPANY,
BANK OF AMERICA, NA,
BANK OF NEW YORK Trust Company NA,
BANKERS TRUST COMPANY OF CALIFORNIA, NA,
n/k/a DEUTSCHE BANK NATIONAL TRUST COMPANY,
BEAL BANK SSB,
CENTEX HOME EQUITY COMPANY, LLC,
n/k/a NATIONSTAR MORTGAGE LLC,
THE CHASE MANHATTAN BANK,
THE CHASE MANHATTAN BANK, n/k/a
JP MORGAN CHASE BANK, NATIONAL ASSOCIATION,
CITIBANK N.A.,
CITIFINANCIAL INC.,
CITIFINANCIAL MORTGAGE COMPANY, INC.,
CITIMORTGAGE, INC.,
THE CIT GROUP/CONSUMER FINANCE, INC.,
CITYSCAPE CORP.,
CREDIT-BASED ASSET SERVICING & SECURITIZATION, LLC,
DEUTSCHE BANK NATIONAL TRUST COMPANY,
EMPIRE DEVELOPMENT LLC,
EMC MORTGAGE CORPORATION,
FCI NATIONAL FUND, II, LLC,
FIRST UNION NATIONAL BANK, n/k/a
WACHOVIA BANK OF DELAWARE,
GE CAPITAL MORTGAGE SERVICES, INC.,
IMC MORTGAGE COMPANY,
JP MORGAN CHASE BANK, n/k/a
JP MORGAN CHASE BANK, NATIONAL ASSOCIATION,
KEYBANK NATIONAL ASSOCIATION,
LONGBEACH MORTGAGE COMPANY,
MANUFACTURERS AND TRADERS TRUST COMPANY,
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
NATIONSCREDIT FINANCIAL SERVICES CORPORATION,

NORWEST BANK MINNESOTA NA, n/k/a
WELLS FARGO BANK OF MINNESOTA,
OPTION ONE MORTGAGE CORPORATION,
THE PROVIDENT BANK, d/b/a PCFS,
UNITED COMPANIES LENDING CORP.,
WASHINGTON MUTUAL BANK FA, n/k/a
WASHINGTON MUTUAL BANK

Defendants

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Erie County Courthouse
Buffalo, New York
January 15, 2009

BEFORE: HONORABLE JOHN M. CURRAN

Justice

APPEARANCES:

CINDY COOPER, ESQ.
Assistant Corporation Counsel
Attorney for the Plaintiff

KENNETH A. MANNING, ESQ.
TIMOTHY W. HOOVER, ESQ.
Attorney for Bank of America, N.A.,
NationsCredit, Bank of New York Mellon

CHRISTOPHER D. CATALANO, ESQ.
Attorney for Bank of America, N.A.,
NationsCredit Financial

KENNETH C. RUDD, ESQ.
Attorney for Countrywide Home and
Aurora Loan Services acting for
Deutsche Bank

DEBORAH M. GALLO, ESQ.
Attorney for Cityscape Corp.

DEAN M. DREW, ESQ.
Attorney for Beal Bank

LESLIE MARK GREENBAUM, ESQ.
Attorney for Option One, Centex Home Equity Company

FRANKLIN W. HELLER, ESQ.
Attorney for Credit Based Asset Servicing and Securitization

RANDALL D. WHITE, ESQ.
Attorney for Citibank, N.A., Citifinancial, CitiMortgage,

LUCIA NALE, ATTY-AT-LAW
Attorney for Citibank, Citifinancial, CitiMortgage

R. ANTHONY RUPP III, ESQ.
MARCO CERCONE, ESQ.
Attorney for Bank of New York Trust, The Chase Manhattan, First Union National, Mortgage Electric, The Bank of New York, Successor to JP Morgan Chase, Deutsche Bank National Trust

JEFFREY P. BARRINGER, ESQ.
Attorney for IndyMac, Bankers Trust Company, Deutsche Bank

PRESENT:

MICHAEL A. BRADY, ESQ.
DAVID H. NELSON, ESQ.
SUSAN C. RONEY, ESQ.
RENEE M. ROOT, ESQ.
RICHIK SARKAR, ESQ.
DAVID B. SMITH, ESQ.

Sally S. Frizzell, CSR
Official Court Reporter

THE COURT: But that internal operation, that has no bearing on what happened beyond your client's books and records, correct?

MR. BARRINGER: Well, correct.

THE COURT: That's not really an important fact, is it? Or is it?

MR. BARRINGER: Well, it is because if they had --

THE COURT: It is for your client, okay.

MR. BARRINGER: If they had been in possession of the property, they took no further collection action and subsequently left possession of the property.

THE COURT: Okay. Thank you very much for that.

(Discussion off the record.)

THE COURT: Off the record, with the assistance of my law clerk, I was able to confirm that my notes are accurate. That the following properties are dismissed, and it's my understanding that this is on consent: 1941 Niagara, which is -- we have under the Bank of New York; 420 East Ferry, which is also the Bank of New York and whatever successors there are; 426

Curtis, Option One Mortgage, and that's -- the motion is withdrawn because there has been a settlement on that one; 349 Moselle, CitiMortgage, dismissed on consent; 21 Titus, CitiMortgage, dismissed on consent; 496 Fillmore, under our title of Countrywide and/or Deutsche National Bank, whatever it is, dismissed on consent. So that cleans up those few, at least we've got that.

Does anybody else wish to be heard?

MR. CATALANO: Your Honor --

THE COURT: Mr. Catalano, go ahead.

MR. CATALANO: I apologize. And this is not really a rebuttal point.

THE COURT: Go slow for us, please.

MR. CATALANO: I forgot to mentioned in my opening presentation that of course the defendants have also moved to sever any claims to the extent that the Court doesn't dismiss them, so I wanted to make sure that I preserve that issue. And that's all. Thank you very much, Your Honor.

THE COURT: All right. The decision on the motion is as follows.

There is a motion to dismiss with respect to the first cause of action. That motion attacks the complaint because it does not allege any basis for the allegation that the defendants who are still present in the case with respect to the properties that are still involved in the case, that there aren't sufficient factual allegations upon which to defend as to the basis of the City to claim that the defendants are either owners, mortgagees in possession, or otherwise exercise dominion and control. The Court accepts that argument and therefore grants the motion to dismiss on that basis alone, and grants it without prejudice.

The City's application with respect to the first cause of action to replead is granted and will be afforded until March 31, 2009, in which to serve an amended complaint, repleading that cause of action. And, in particular, as to each and every property, there must be an identification not only of the defendant but also as to an allegation whether the defendant is an owner and/or a mortgagee in possession and/or has exercised dominion and control. And there must be at least some factual allegation supporting any or all of those allegations in the complaint.

With respect to the second cause of action, the motion to dismiss essentially raises factual questions as to when and how the nuisance arose and, therefore, the motion with respect to the nuisance cause of action is in all respects denied.

The third cause of action as to joint and several liability, as I understand it, Ms. Cooper, has been withdrawn, is that accurate?

MS. COOPER: That's correct.

THE COURT: So I'll ask you that on or before March 31, 2009, that you replead containing the same second cause of action that you presently have, but repleading the first cause of action, granting your motion.

With respect to the application to sever, that is extremely tempting, given the varieties and differences among the various properties. However, until we have a repled complaint and we see what the particulars are as to each property in the complaint, I feel that I'm compelled at this juncture to deny that motion to sever, without prejudice and subject to renewal once we have a further complaint.

Regarding the first cause of action, I have until March 31, correct?

THE COURT: Correct.

MS. COOPER: And --

THE COURT: The second cause of action stays as is.

MS. COOPER: Thank you.

THE COURT: You're welcome.

Mr. Catalano, Mr. Manning, any requests for clarification?

MR. CATALANO: No, Your Honor. Not from me.

THE COURT: From any other defense counsel, any request for clarification? If you raise your hand, I'll call on you.

Mr. Heller, you were first. You beat Mr. Greenbaum.

MR. HELLER: Your Honor, with respect to my motion on behalf of my client regarding the second cause of action based upon statute of limitations, I take it that is denied?

THE COURT: That is all denied, subject to the repleading.

MR. HELLER: So it's subject to being renewed after the plaintiff repleads?

THE COURT: Correct.

MR. HELLER: Thank you, Your Honor.

THE COURT: That's correct. And I'm sorry to put the defendants in a holding pattern in that regard. I acknowledge to a certain extent that's what I'm doing. But I get the sense that the City needs to do some more due diligence here, with all respect, to try to get this together, now they've got more information. And with that, I think they'll be better able to look at your motions on the nuisance cause of action as well as with respect to statute of limitations. So that -- does that clarify at all, Mr. Heller?

MR. HELLER: Yes, Your Honor.

THE COURT: Mr. Greenbaum, what can I do for you, sir, in terms of the clarification?

MR. GREENBAUM: With regard to the documentary evidence that this blight had occurred in the property two years before the foreclosure proceedings were commenced --

THE COURT: Yeah, that motion as to that application, I'm glad you asked, is denied in all respects. I accept the case law with respect to the allegation of the City, which I believe is that isn't dismissed in the same way that count one is, Your Honor.

THE COURT: Because I don't have an application to replead that as well, I didn't think. Do I have that right, Ms. Cooper? Were you applying to replead the second cause of action as well?

MS. COOPER: The application to replead --

THE COURT: Use the microphone.

MS. COOPER: The application to replead, as in -- that was dated in my responding papers, applied to the complaint in its entirety.

THE COURT: Okay. So that may answer the question.

Let me retrack my steps. Forgive me for not fully appreciating it. The motion to -- the application to replead -- let me retrace my steps then, Ms. Cooper.

The motion to dismiss as to the first cause of action and the second cause of action, I'm correcting my decision and I acknowledge it right now, is in all respects granted, without prejudice, subject to being repled, along the lines I described before.

The defendants are then free to attack that amended complaint on the similar basis. But having told you already, Mr. Greenbaum, you know, fortunately you got an advanced look, I'm not persuaded that there is no continuing duty to carry a nuisance, if the allegations are otherwise factually appropriate, in terms of mortgagee in possession, owner, and dominion or control.

What I'm really hoping to do is to move the ball in this case and maybe limit those of you who are in it. Once the City gets a closer look at this, I'm not so sure we'll have quite the full courtroom. I could be wrong.

Mr. Rudd, any other requests for clarification?

MR. RUDD: No, Your Honor.

THE COURT: Anybody else? I hope those of you who came in from out of town have a good trip back. Thank you very much for all your time.

(4:13 p.m. - Case recessed.)