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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION  
MORTGAGE FORECLOSURE/MECHANICS LIEN SECTION**

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The Bank of New York, as trustee for  
the Certificate Holders CWALT, Inc.,  
Alternative Loan Trust 2006-J8,  
Mortgage Pass-Through Certificate,  
Series 2006-J8,

*Plaintiff,*

*v.*

Debbie Bartelstein a/k/a Deborah  
Bartelstein; Unknown Owners and  
Non-Record Claimants,

*Defendants.*

Case Number: 2007 CH 38051

Calendar 60

Honorable William B. Sullivan,  
Judge Presiding

Property Address:  
321 Woodlawn Avenue  
Glencoe, Illinois 60022

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**MEMORANDUM OPINION AND ORDER**

**WILLIAM B. SULLIVAN, Circuit Judge:**

Before the Court is Defendant DEBBIE BARTELSTEIN's ("Bartelstein") Verified Amended Petition for Attorney's Fees and Costs ("Fee Petition") pursuant 735 ILCS 5/15-1510. For the following reasons, Bartelstein's Fee Petition is hereby GRANTED and Plaintiff BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATE HOLDERS CWALT, INC., ALTERNATIVE LOAN TRUST 2006-J8, MORTGAGE PASS-THROUGH CERTIFICATE, SERIES 2006-J8's ("Bank of New York") is hereby found liable to Bartelstein for damages for reasonable attorney's fees and costs in the amount of \$160,492.52.

## I. BACKGROUND

This Fee Petition stems from a nearly seventeen year old foreclosure case. On September 27, 2023, the Court entered a 48-page judgment in this cause in which the Court ultimately granted summary judgment in favor of Defendant Bartelstein.<sup>1</sup> In that Order, the Court additionally dismissed Bank of New York's Amended Complaint to Foreclose Mortgage with prejudice. The Court found the Note to be unenforceable, the Mortgage lien thus extinguished, and ordered Bank of New York to file a release of Mortgage within thirty days. Additionally, the Court found Bank of New York liable to Bartelstein for all attorney's fees and other costs pursuant to 735 ILCS 5/15-1510, and required Bartelstein to submit a detailed prove-up of all fees and costs within 30 days.

Thereafter, on October 27, 2023, Bartelstein timely filed her Verified Petition for Attorney's Fees and Costs. Following various intervening post judgment motions, briefing on those motions, and their respective hearings such as on Plaintiff's Section 2-1203(a) Motion to Reconsider, on March 28, 2024, the Court then granted Defendant leave to file an amended fee petition by April 10, 2024, and set a briefing schedule on the Amended Fee Petition and on Plaintiff's Motion to Reconsider.

Subsequently, the Court reset the briefing schedule and the hearing on both the Amended Fee Petition and the Motion to Reconsider. Eventually, response and

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<sup>1</sup> For a full explanation of the Court's decision to grant summary judgment in Bartelstein's favor and for a more fully developed procedural history of this case, see the Memorandum Opinion and Order entered on September 27, 2023, and the additional reasoning and history included in the Court's September 25, 2024, Memorandum Opinion and Order denying Bank of New York's Motion to Reconsider the entry of summary judgment in Defendant's favor.

reply briefs were timely filed and both matters were set for hearing before the Court on August 12, 2024. On that date, the Court entered an Order entering and continuing Defendant's Verified Amended Fee Petition generally until the entry of its Memorandum Opinion and Order resolving Bank of New York's Motion to Reconsider and took Plaintiff's Motion to Reconsider the September 27, 2023, Memorandum Opinion and Order under advisement for the issuance of a written opinion.

The Court entered its Memorandum Opinion and Order denying Bank of New York's Motion to Reconsider on September 25, 2024. *Inter alia*, Bank of New York's Amended Complaint to Foreclose Mortgage remained dismissed with prejudice, the Note remained deemed as unenforceable, the Mortgage lien thus remained declared extinguished, Bank of New York was enjoined to file a release of mortgage within thirty days, and Bank of New York was otherwise permitted to timely file a notice of appeal in which case the declaratory relief of extinguishing the Mortgage and the injunctive relief of filing a release of mortgage would be stayed pending such appeal. That Order also set a hearing on Bartelstein's fully briefed Verified Amended Fee Petition for October 22, 2024.

On that date, following the Court's thorough review of the Fee Petition, Plaintiff's Response thereto, and Defendant's Reply, the Court heard oral argument on the Fee Petition and entered an Order taking the matter under advisement for the issuance of a written opinion. The Court's ruling follows.

## II. LEGAL STANDARD

According to 735 ILCS 5/15-1510, “[t]he court may award reasonable attorney’s fees and costs to the defendant who prevails in a motion, an affirmative defense or counterclaim, or in the foreclosure action.” The amount to be awarded is at the court’s discretion. *Norman v. U.S. Bank National Association*, 2020 IL App (1st) 190765, ¶ 36. A plaintiff may also recover attorney’s fees, however, “only to the extent specifically set forth in the mortgage or other written agreement between the mortgagor and the mortgagee or as otherwise provided” by the statute. 735 ILCS 5/15-1510(b).

Accordingly, the party seeking attorney’s fees bears the burden of proof and must produce sufficient evidence to prove and support the determination that such fees are reasonable. *Young v. Alden Gardens of Waterford, LLC*, 2015 IL App (1st) 131887, ¶ 102. In determining the reasonableness of such fees, the court must evaluate a number of factors, including:

the skill and standing of the attorneys, the nature of the case, the novelty and/or difficulty of the issues and work involved, the importance of the matter, the degree of responsibility required, the usual and customary charges for comparable services, the benefit to the client, and whether there is a reasonable connection between the fees and the amount involved in the litigation. *Id.* (quoting *Kaiser v. MEPC American Properties, Inc.*, 164 Ill. App. 3d 978, 984 (1st Dist. 1987) (internal citations omitted).

The *Kaiser* court shed additional light on the matter, stating:

to justify a fee, more must be presented than a mere compilation of hours multiplied by a fixed hourly rate or bills issued to the client. Rather, the petition for fees must specify the services performed, by whom they were performed, the time expended thereon and the hourly

rate charged therefor. *Kaiser*, 164 Ill. App. 3d at 984 (internal citations omitted).

Moreover, the court explains that the reasonableness of the fees shall be sufficiently supported so as to avoid a decision based upon mere conjecture or “on the opinion or conclusions of the attorney seeking the fees.” *Id.* It is the absolute responsibility of the petitioner to keep a thorough record of all hours and resources expended for the matter. *Id.*

### III. ANALYSIS

In Illinois, a chancery court will retain jurisdiction to resolve matters collateral to a previous judgment, such as a fee petition, even after issuing a final appealable order. *Libertyville v. Bank of Waukegan*, 152 Ill. App. 3d 1066, 1072-73 (2nd Dist. 1987). Moreover, the court is not divested of its jurisdiction after a notice of appeal has been filed. *Id.* (“While the general rule is that the filing of a notice of appeal divests the trial court of jurisdiction, the trial court retains jurisdiction to determine matters collateral or incidental to the judgment”).

The law generally holds that where a notice of appeal has been filed, the appellate court is thereby vested with jurisdiction to hear the case and, accordingly, review it to affirm, reverse, or modify the judgment. *Moenning v. Union Pacific R.R. Co.*, 2012 IL App (1st) 101866, ¶ 22. However, as it relates to fee petitions and other incidental matters to the judgment, the trial court will retain its jurisdiction as “collateral or incidental matters do not affect or alter the issue from which the notice of appeal was filed.” *Navistar Financial Corp. v. Curry Ice & Coal, Inc.*, 2016 IL App (4th) 150419, ¶ 48 (citing *General Motors*, 242 Ill. 2d at 174, 950 N.E.2d at

1142-43). Accordingly, this Court thus maintains jurisdiction over this matter as it relates to Bartelstein's Verified Amended Petition for Attorney's Fees and Costs now before the Court.<sup>2</sup>

As a preliminary point, this Court would like to note that trial court opinions hold no precedential weight. *People v. Amor*, 2020 IL App (2d) 190475, ¶ 21. Accordingly, all citations throughout to *The Bank of New York Mellon v. Sperekas*, No. 2016-CH-10079 (Cir. Ct. Cook County, Nov. 8, 2019) and likewise Exhibit B to Defendant's Amended Verified Fee Petition (a copy of the trial court's opinion) are stricken and not taken into consideration for the matter at bar as it is a trial court opinion that is not binding precedent.

A. Bartelstein is Entitled to Attorneys' Fees and Costs without Reduction  
for the First Twelve Years of Litigation and without Setoff

Bank of New York has raised two arguments in response to Defendant's Petition. First, Bank of New York avers that the fees and costs must be limited to only include the costs incurred as they relate to the affirmative defenses that brought Bartelstein success. It further argues that this Court holds broad discretion in awarding attorney's fees, that shall only be allowed if they are found to be reasonable after a thorough analysis of a number of factors. *U.S. Bank National Association v. Randhurst Crossing, LLC*, 2018 IL App (1st) 170348, ¶ 78. Bank of New York contends that careful and fair analysis would reasonably lead this Court to believe that the award should be limited to those fees and costs related to the two

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<sup>2</sup> The Court would like to note that as of the issuance of this Memorandum Opinion and Order, no notice of appeal has yet been filed and only twenty-nine days have elapsed since the entry of the final appealable order in this cause—the Court's September 25, 2024, Memorandum Opinion and Order.

Affirmative Defenses raised in Bartelstein's December 2019 Motion for Summary Judgment, that ultimately brought her success, and would exclude those incurred prior to that Motion being filed.

Second, Bank of New York asserts that it is entitled to its own attorney's fees and, accordingly, a setoff against the fees requested by Defendant. Bank of New York raises the argument that despite having not prevailed on the outcome of the judgment, they are still entitled to attorney's fees per the contractual language laid out in the Mortgage. It relies, specifically, on Paragraph 14, that states: "Lender may charge Borrower fees for services performed in connection with Borrower's default (\*\*\*) including, but not limited to, attorney's fees." (Pl.'s Compl. Ex. A, Mortgage, ¶ 14). Plaintiff concludes that any amount this Court determines Bartelstein be awarded for attorney's fees should be offset by the amount Defendant owes Bank of New York in attorney's fees per the Mortgage.

Starting with Bank of New York's first argument, 735 ILCS 5/15-1510 states that "[t]he court may award reasonable attorney's fees and costs to the defendant who prevails in a motion, an affirmative defense or counterclaim, or in the foreclosure action." In this case, Defendant has not prevailed on only one, but on three of the four: a motion (her Motion for Summary Judgment), an affirmative defense (both her *Accetturo* and Time Barred affirmative defenses), and the foreclosure action (as Plaintiff's Amended Complaint was dismissed in its entirety with prejudice). Plaintiff has argued that Defendant may only be awarded attorney's fees specifically associated with the affirmative defenses upon which she

has prevailed; however, Plaintiff has failed to cite to any case law supporting this position. Courts are not depostories into which litigants may dump the burden of research; courts are entitled to have the issues clearly defined and a cohesive legal argument presented; and arguments are forfeited where the party fails to present a cogent argument. *Alms v. Peoria County Election Commission*, 2022 IL App (4th) 220976, ¶ 28. Additionally, there is nothing in the governing statute stating, or even anything so much as alluding to this logic. Accordingly, Defendant is entitled to attorney's fees for the entirety of this litigation—from start to end.

Turning now to Bank of New York's second argument, Plaintiff posits that it is entitled to its own attorney's fees as a setoff. This lacks a solid foundation and is not supported in the least. First and foremost, there is an unresolved issue as to standing in this case. While the Opinion issued by this Court on September 27, 2023, struck Bartelstein's capacity and standing affirmative defenses as moot, this is not an indication of a resolution by any means. They were simply mooted out by operation of law because Defendant ultimately prevailed on her two other affirmative defenses alone. There still exists a genuine issue of material fact as to whether or not Bank of New York possessed the requisite standing and capacity to have brought this case nearly seventeen years ago in 2007. It was unclear then, and remains unclear now, as to whether Bank of New York was the holder of the Note at the time of the default and thus if Bank of New York is even the entity entitled to any rights under the Mortgage for attorney's fees, even assuming that this right does exist. If Bank of New York would like a setoff for its fees and costs, it must



prove that it is entitled to such a finding. The record simply does not support this finding as of today.

Moreover, Bank of New York does not cite any case law to bolster or support its argument that a setoff is even a permissible option for this Court to explore, let alone even consider. While the Mortgage is silent as to whether or not Bank of New York may only be awarded attorney's fees where they have prevailed, and 735 ILCS 5/15-1510 would have been superseded by such contractual conditions, there still exists the possibility that a setoff would be permitted; however, such a situation is not present here. Beyond that, assuming *arguendo* that Bank of New York is entitled to a setoff, it has also failed to provide even a scintilla of evidence to support such a request. Bank of New York has not attached any affidavits, proof of the attorney's fees and costs it has allegedly incurred, or presented any other evidence to reinforce its position. This Court may not make its decision based on mere conjecture. *Kaiser*, 164 Ill. App. 3d at 984. As Plaintiff has failed to provide any case law or evidence that would otherwise buttress its position toward this assertion, Bank of New York's argument is simply both legally and factually insufficient as presented. It would be unjust for this court to rule against the manifest weight of the evidence that has been presented by Defendant. Accordingly, no setoff shall be awarded.

B. The Amount of Attorney's Fees and Costs That  
Bartelstein Has Requested is Reasonable

Defendant Bartelstein's Amended Verified Fee Petition asks for \$165,757.82 in attorney's fees and costs. Accordingly, the requested fees and costs are broken

down in the schedule attached to the Fee Petition. The schedule identifies several individuals as having contributed to this case, "RR," "JS," "RG," "WG," and "ES." Mr Radjenovich confirmed that he initialed all contributing hours with "RR." Counsel also confirmed that "RG" and "JS" are initials for Richard Gilbaugh and Jeffrey Strange, respectively; however, although Mr. Radjenovich also confirmed the identities of "WG" and "ES," the Fee Petition is silent not only as to their qualifications and credentials, but also as to their identities. This court will not speculate as to these individuals or their merits to charge fees in any capacity. Accordingly, any fees signed off or initialed by "WG" (\$2,375.00) and "ES" (\$2,475.00) are hereby omitted and will not be granted to Defendant.

As for Richard Gilbaugh and Jeffrey Strange, Defendant has proven that their levels of experience and credentials make them qualified for their respective attorney's fees. This Court recognizes that Mr. Gilbaugh has appeared before this Court on other matters, and acknowledges his practice of law in the State of Illinois for 12 years. Additionally, although Jeffrey Strange has not appeared before this Court, the Fee Petition has made clear that he has been a licensed attorney in this State for 45 years and takes judicial notice that he is the attorney whose name coincides with the law firm representing Bartelstein. Their skill level, accolades, and years of practice are evidence of the fact that their respective billing rates of \$350 per hour for Mr. Gilbaugh and \$425 per hour for Mr. Strange as well as the total fees billed by each attorney—\$525.00 for Mr. Gilbaugh's services and \$2,337.50 for Mr. Strange's services—are reasonable.

Defendant's primary attorney, Rade Radjenovich, has asserted in the Verified Amended Fee Petition that he is entitled up to an hourly rate of \$550 per hour. This court must evaluate a number of factors to determine the reasonableness of this rate, including:

the skill and standing of the attorneys, the nature of the case, the novelty and/or difficulty of the issues and work involved, the importance of the matter, the degree of responsibility required, the usual and customary charges for comparable services, the benefit to the client, and whether there is a reasonable connection between the fees and the amount involved in the litigation. *Young*, 2015 IL App (1st) 131887, ¶ 102 (internal citations omitted).

This court would first like to note that Mr. Radjenovich has attended prestigious educational institutions, earning his B.A. from Northwestern University and his J.D. from Indiana University. Mr. Radjenovich is a seasoned attorney, having been licensed in both the State of Illinois and the State of Indiana for 30 plus years, and, specifically, appearing before this Court on numerous occasions. Mr. Radjenovich has consistently conducted himself with poise and professionalism, and has sufficiently proven that he is a qualified practitioner in his area. Moreover, Mr. Radjenovich has shown that he is diligent and competent in his work, tackling multiple cases of first impression, including the case at bar among others. See *Deutsche Bank National Trust Company v. Roongseang*, 2019 IL App (1st) 180948; see also *Deutsche Bank Trust Company Americas v. Sigler*, 2020 IL App (1st) 191006. Additionally, he has successfully litigated in front of the Illinois Appellate Court on many cases including *Roongseang* and *Sigler*.

Mr. Radjenovich has litigated multiple complex legal issues, including the one before this Court today. This Court has deemed the case at bar to be a daunting one, not only due to its complexity, but also its unusual lengthiness; however, Mr. Radjenovich's approach to this case showed skill and tact, evidence of his successful career in litigation. Mr. Radjenovich has been a zealous advocate for his client, Debbie Bartelstein, throughout the course of litigation, and he has demonstrated a keen understanding of intricate legal matters and a strong foundation in mortgage foreclosure law.

For the reasons outlined herein, and due to Mr. Radjenovich's rich background in litigation and knowledge of the law, his billed hourly rate is hereby deemed a reasonable representation of his services. It is worth noting that his fees increased from \$425 per hour to \$550 per hour. The Court deems both these values as reasonable for the work done, and ultimately deems reasonable a total of \$154,443.75 to be awarded to Bartelstein for Mr. Radjenovich's contributions for attorney's fees he billed to Bartelstein.

In sum, the Court finds the total for attorney's fees incurred by Messrs. Gilbaugh, Strange, and Radjenovich on Bartelstein's behalf in the total of \$157,306.25 (\$525.00 + \$2,337.50 + \$154,443.75) to be reasonable.

Next, turning to the request for costs, Bartelstein seeks an amount of \$3,601.57. Looking at the petition, however, there are two small errors. First, one amount in the schedule does not match its respective invoice that was provided. The schedule attached as Exhibit A shows a charge for \$609.60 for a court reporter, yet

the invoice itself from the court reporter indicates that the charge was for \$609.50. Therefore, there is a \$0.10 discrepancy that will be deducted from the cost total requested. Secondly, there is an inconsistency between the schedule and the invoices attached in that there is a charge included in the schedule for \$415.20 for a court reporter, but no invoice from the court reporter to substantiate this charge. Accordingly, an amount of \$415.20 will additionally be subtracted from the costs requested. As for the \$188.00 charge for the appearance fee, the Court has reviewed this case's record and takes judicial notice that this is the amount charged by the Clerk's Office for Bartelstein's appearance to be filed through counsel. As to the remainder of the costs charged, all are properly proven up and thus also deemed reasonable. In total, Bartelstein is entitled to costs in the amount of \$3,186.27.

#### IV. CONCLUSION

For the reasons mentioned herein, Bartelstein's Verified Amended Petition for Attorney's Fees and Costs is hereby GRANTED, and Bank of New York is hereby found liable for damages for reasonable attorney's fees in the amount of \$157,306.25 and reasonable costs in the amount of \$3,186.27 to Bartelstein for a grand total of \$160,492.52.

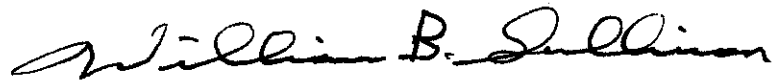
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**FOR THE AFOREMENTIONED REASONS, THE COURT HEREBY ORDERS  
AS FOLLOWS:**

- (1) Bartelstein's Verified Amended Petition for Attorney's Fees and Costs is hereby GRANTED; and
- (2) Bank of New York is hereby found liable for damages for attorney's fees and costs to Bartelstein in the amount of \$160,492.52.

Date: October 24, 2024

ENTERED:



Honorable William B. Sullivan  
Cook County Circuit Judge

ORDER PREPARED BY THE COURT  
ccc.mfmlcalendar60@cookcountyil.gov  
(312) 603-3894

