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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") Motion to Reconsider and Vacate as Void Portion of November 14, 2023, Order Granting 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") Motion to Stay Enforcement of the September 27, 2023, Judgment Order and Setting a Briefing Schedule on Bank of New York's Motion to Reconsider ("Motion"). For the

following reasons, Bartelstein's Motion is hereby DENIED in part and GRANTED in part.

## I. BACKGROUND

On September 27, 2023, this Court entered a lengthy, 48-page Memorandum Opinion and Order that *inter alia* granted Bartelstein's Motion for Summary Judgment, dismissed Bank of New York's Amended Complaint to Foreclose Mortgage with prejudice, found the Note at issue in this case unenforceable, declared Bank of New York's Mortgage lien extinguished, ordered Bank of New York to file a release of mortgage within 30 days, found Bank of New York liable to Bartelstein for all reasonable attorneys' fees and costs incurred associated with litigating this matter, gave Bartelstein 30 days' leave to prove up damages concerning the award of attorneys' fees and cost, and invited Bank of New York to file a motion to reconsider under 735 ILCS 5/2-1203. Following entry of that Order, on October 23, 2023, 26 days after entry of the September 27, 2023, Memorandum Opinion and Order, Bank of New York indeed chose to file a Motion to Reconsider under 735 ILCS 5/2-1203(a). Thereafter, on October 27, 2023, the 30th day after entry of the September 27, 2023, Memorandum Opinion and Order, Bank of New York filed a separate Motion to Stay Enforcement of said Order pursuant to 735 ILCS 5/2-1203(b). On that same date and within the timeframe permitted by the Court, Bartelstein filed her Verified Petition for Attorneys' Fees and Costs.

Both Motions and the Petition were presented before the Court on November 14, 2023. Thereafter, on November 16, 2023, the Court entered an Order granting

Bank of New York's Motion to Stay Enforcement. Therein, over Bartelstein's objection, the Court stayed the portions of its Order requiring the filing of a release of mortgage and extinguishing the Mortgage pending the Court's ruling on Bank of New York's Motion to Reconsider. In that same November 16, 2023, Order, the Court also set a briefing schedule on Bank of New York's Motion to Reconsider and on Bartelstein's Fee Petition. Following the entry of the November 16, 2023, Order, Bartelstein filed the instant Motion attacking that Order on November 21, 2023, and set the Motion for presentment before the Court on December 7, 2023; however, due to illness with the Court, presentment of the Motion was continued to December 13, 2023. On December 13, 2023, the Court entered an Order striking the briefing schedule on Bank of New York's Section 2-1203(a) Motion to Reconsider and Bartelstein's Fee Petition and entered a briefing schedule on the instant Motion. After various extensions of time and continuances that were permitted by the Court, Bank of New York timely filed its Response to the Motion on January 18, 2024, and Bartelstein timely filed her Reply to the Motion on February 29, 2024. On March 14, 2024, after reading the Motion, the Response, and the Reply, the Court heard oral argument and entered an Order taking the Motion under advisement. The Court's ruling follows.

## II. ANALYSIS

Bartelstein now moves this Court to reconsider and vacate that portion of this Court's November 16, 2023, Order that granted Bank of New York's Motion to Stay pursuant to 735 ILCS 5/2-1203(b). Bartelstein basically makes three main

arguments. First, she argues that after October 27, 2023, 30 days after the entry of the September 27, 2023, Memorandum Opinion and Order, the Court was divested of jurisdiction and lost the ability to consider Bank of New York's Section 2-1203(b) Motion to Stay; and, therefore, when the Court ultimately granted that Motion 50 days after entry of the September 27, 2023, Memorandum Opinion and Order, it did so without jurisdiction. Defendant also argues that just because Bank of New York filed a Section 2-1203(a) and/or (b) Motion, such Motions did not automatically stay enforcement of the relief granted in the September 27, 2023, Memorandum Opinion and Order, and in order for the relief to be stayed, a court order needed to be entered within 30 days of the entry of that judgment otherwise a stay of that relief would have been granted without jurisdiction—the situation Defendant argues is present currently before the Court. Lastly, Bartelstein argues that her Petition for fees is not a motion directed against the judgment and the claim for fees is collateral to the judgment. As such, Bartelstein posits that her petition for fees did not extend Bank of New York's time to file an appeal or a post-judgment motion.

735 ILCS 5/2-1203(a) provides that parties to an action may within “30 days after the entry of the judgment \*\*\* file a motion for \*\*\* modification of the judgment or to vacate the judgment or for other relief.” This means that following the Court's September 27, 2023, Order, Bank of New York had 30 days to do one of three things: (1) file a notice of appeal<sup>1</sup>; (2) file a Section 2-1203 motion directed at

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<sup>1</sup> It is important to note that Bank of New York does not lose its right to file a notice of appeal having elected to file a Section 2-1203 motion directed at the judgment order first because “[t]he filing of a section 2-1203 motion will toll the time to appeal. See Ill. S. Ct. R. 303(a)(1) (eff. July 1, 2017).” *Chicago Architectural Metals, Inc. v. Bush Construction Co.*, 2022 IL App (1st) 200587, ¶ 41. Additionally, on page 2 of her Motion, Bartelstein states that “filing of Bank of New York's motion to reconsider did not toll Bank of New York's time for filing a notice of appeal,” but then in

the judgment order; or (3) accept defeat and comply with the order as entered. See *Chicago Architectural Metals, Inc. v. Bush Construction Co.*, 2022 IL App (1st) 200587, ¶ 46. Here, Bank of New York chose “option 2.” In fact, Bank of New York filed two separate motions under Section 2-1203 attacking the judgment. It is apparent from simply looking at a calendar and counting days that both of Plaintiff’s Section 2-1203 Motions (one brought under subsection (a) and the other under subsection (b)) were brought within 30 days of the Court’s September 27, 2023, Memorandum Opinion and Order.<sup>2</sup> Counting days on a calendar also obviously indicates that the Court’s November 16, 2023, Order, was entered 50 days after the Memorandum Opinion and Order and thus beyond the 30 day timeframe. This is important since a “trial court loses jurisdiction after 30 days from the time the final judgment is entered when either (1) a posttrial motion directed against the judgment is not filed, (2) 30 days pass from the time the trial court disposes of a timely filed posttrial motion, or (3) a notice of appeal is timely filed.” *Won v. Grant Park 2, L.L.C.*, 2013 IL App (1st) 122523, ¶ 20.

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paragraph 10 on page 7, she contradicts herself and states “[a] timely filed postjudgment motion \*\*\* extends the time within which notice of appeal may be filed, until 30 days after the motion is decided” citing *Longo v. Globe Auto Recycling, Inc.*, 318 Ill. App. 3d 1028, 1033 (1st Dist. 2001). Case law is clear that Bank of New York’s time for filing a notice of appeal has been tolled by her filing of her Section 2-1203(a) Motion to Reconsider. Accordingly, Bartelstein’s arguments to this end bear no weight.

<sup>2</sup> While it is true that “[a] party may make only one postjudgment motion directed at a judgment order that is otherwise final,” successive postjudgment motions are only impermissible when the second motion is filed more than 30 days after the judgment or any extension of time allowed for the filing of the postjudgment motion. Ill. S. Ct. R. 274; *Sears v. Sears*, 85 Ill. 2d 253, 259 (1981). This rule is in place to prevent harassment and to promote finality. *Id.* This is not an issue here because Bank of New York’s second postjudgment motion was timely filed within 30 days and there is no threat that the motion would delay the action or complicate the administration of determining when the time for appeal begins to run. *Id.*

To begin, there seems to be at least some disagreement between the parties as to whether the Court's September 27, 2023, Memorandum Opinion and Order, granted declaratory and/or injunctive relief to Bartelstein. This is true even though during oral argument both parties seemed to agree that the relief granted to Defendant was declaratory and/or injunctive in nature. This is a threshold issue. If the orders were not injunctive or declaratory in nature, then Bank of New York's act of filing a Motion under Section 2-1203(b) would have automatically stayed enforcement of the September 27, 2023, Order, and, therefore, the question as to whether the Court had jurisdiction to enter the November 14, 2023, Order would be moot. Contrarily, if the September 27, 2023, Order did grant injunctive or declaratory relief, then only a court order could stay enforcement of the same. See 735 ILCS 5/2-1203(b). The Court need not and will not opine as to whether the relief granted was injunctive or declaratory as regardless of the answer to that question, the result is the same, the Court had jurisdiction to stay enforcement of the September 27, 2023, Order, and the stay granted in the November 16, 2023, Order was proper. This is true whether that Order was automatically stayed upon the timely filing of Bank of New York's Section 2-1203(b) Motion or whether that Order needed to be stayed by the November 16, 2023, Order which, for the following reasons, the Court finds it had jurisdiction to enter.

The Court agrees with Bartelstein that the filing of Bank of New York's Section 2-1203(a) Motion did not automatically stay enforcement of the September 27, 2023, Order, but what it did do was continue to vest this Court with jurisdiction

over the case. Here, because Plaintiff filed its Section 2-1203(a) Motion timely within 30 days, because that Motion remained undisposed when Plaintiff's Section 2-1203(b) Motion was filed in apt time (regardless of whether such a motion needed to be filed within 30 days following the timely filing of Plaintiff's Section 2-1203(a) Motion), and because both Plaintiff's Section 2-1203(a) Motion and Section 2-1203(b) Motion remained undisposed when the Court granted the Section 2-1203(b) Motion, this Court retained jurisdiction over *the case* meaning that this Court's November 16, 2023, Order was properly entered with jurisdiction and accordingly stands as entered. Upon filing of Plaintiff's Section 2-1203(a) Motion, the Court's September 27, 2023, Memorandum Opinion and Order was no longer a final order because the Court would still have to enter an order disposing of Plaintiff's Section 2-1203(a) Motion. *Trentman v. Kappel*, 333 Ill. App. 3d 440, 443 (5th Dist. 2002) ("We concluded that so long as any party's posttrial motion remained undisposed, the underlying judgment would not be final and the trial court retained jurisdiction over the case" (citing *Spurgeon v. Alton Memorial Hospital*, 285 Ill. App. 3d 703, 707 (5th Dist. 1996))). It is also clear that the circuit court has the "inherent power to review, modify, or vacate interlocutory orders while the court retains jurisdiction over the *entire controversy*." *Hernandez v. Pritikin*, 2012 IL 113054, ¶ 42 (emphasis added). The second that Bank of New York filed a Section 2-1203(a) Motion, the September 27, 2023, Order was no longer final and instead was interlocutory because that Order did "not dispose of all issues between the parties and it [did] not terminate the litigation." *EMC Mortgage Corp.*

*v. Kemp*, 2012 IL 113419, ¶ 11. For these reasons and the additional ones that follow, Bank of New York's Section 2-1203(b) Motion was brought in apt time and the Court's November 16, 2023, Order granting Plaintiff's Section 2-1203(b) Motion and staying portions of the Court's September 27, 2023, Order was entered with jurisdiction and shall stand as entered.

This Court disagrees with Bartelstein for additional myriad reasons as well. First of all, since the timely filing of a motion under Section 2-1203(a) would mean that the motion remains undisposed, the court would retain jurisdiction over "the case" and not just over that particular motion. *Trentman*, 333 Ill. App. 3d at 443. This means that the Court would have jurisdiction to hear all motions brought (including Bank of New York's Section 2-1203(b) Motion). Also, nothing in the plain language of Section 2-1203(b) requires that an Order staying the enforcement of declaratory or injunctive relief be entered within 30 days. It does say that simply filing a Motion under that Section would not automatically stay a judgment granting such relief and that a court order would need to be entered to stay injunctive or declaratory relief; however, it would be absurd to posit that a motion brought under Section 2-1203(b) would have to be filed, potentially briefed, argued, and ruled upon within 30 days of the judgment's entry, and anything to the contrary has no basis in law in this State. A delay by a court in adjudication of such a motion brought under Section 2-1203(b) could prejudice the moving party and because that is entirely out of the movant's control, such a requirement on a court or result on a movant would not only be absurd but also entirely unfair too. Nothing



in the plain language of the statute requires that such a motion be ruled upon within 30 days or that an order granting a stay be entered within 30 days. Moreover, it would be wrong and incongruous to read Section 2-1203(a)'s 30-day requirement into Section 2-1203(b) where this State's legislature noticeably omitted its existence. Additionally, even if Subsection (a)'s requirement were read into Subsection (b)—which it should not—the Motion here was filed within that 30-day period nonetheless.

Another consideration is that if a court still retains jurisdiction to reconsider under Section 2-1203(a) following a timely motion being brought, and that court did choose to rule in the movant's favor on such a Section 2-1203(a) motion, then that court would not only have jurisdiction to stay the relief granted in the judgment, but also could completely reverse its prior ruling and vacate or modify the order entirely. *Hernandez*, 2012 IL 113054, ¶ 42. Such is the case here too. Since Plaintiff timely brought a Motion under Section 2-1203(a), the Court could not only stay enforcement of its judgment, but could also completely reverse, vacate, or modify its order extinguishing the mortgage lien and remove the requirement to file a release of mortgage. Therefore, in order to promote orderly administration of justice and judicial economy, it only makes logical sense that if the Court has the jurisdiction to reconsider and reverse itself, then it also has the jurisdiction and inherent authority to control the disposition of this case by staying the relief granted pending its ruling on the motion to reconsider in order to keep the *status quo* while the motion is being adjudicated so as to not negatively affect any of the procedural due process rights of

the parties, especially that party which seeks reversal of the Court's ruling against it—here, Bank of New York. *Estate of Bass v. Katten*, 375 Ill. App. 3d 62, 68 (1st Dist. 2007) (“A stay order seeks to preserve the status quo existing on the date of its entry and does not address in any way the merits of the underlying dispute. A circuit court may stay proceedings as part of its inherent authority to control the disposition of cases before it. It may consider factors such as the orderly administration of justice and judicial economy in determining whether to stay proceedings” (internal citations omitted) (citing *Kaden v. Pucinski*, 263 Ill. App. 3d 611, 615 (1st Dist. 1994); *Philips Electronics, N.V. v. New Hampshire Insurance Co.*, 295 Ill. App. 3d 895, 901-02 (1st Dist. 1998))).

As to Bartelstein's argument that Bank of New York never filed a motion for extension of time allowing this Court's Order entered on the 50th day to be entered with jurisdiction, that is a red-herring. Even if Bank of New York needed to file a motion for extension of time as to its Section 2-1203(b) Motion—which this Court finds it did not in the factual timeline here—Bank of New York did in fact timely file both of its motions under Section 2-1203 within 30 days, so there was never any need for it to file a motion for extension of time in the first place. *See Illinois State Toll Highway Authority v. Heritage Standard Bank & Trust Co.*, 157 Ill. 2d 282, 289 (1993). “A trial court loses its jurisdiction over a case after the passage of 30 days, unless within that 30-day period the trial court has extended the time in which a posttrial motion *can be filed*.” *Trentman*, 333 Ill. App. 3d at 441-42 (emphasis added) (citing *Predny v. Village of Park Forest*, 164 Ill. App. 3d 688, 693-94 (1987)).

The request for extension of time is as to *filing* of the postjudgment motion not as to adjudication of the postjudgment motion since the *filing* of the motion itself means that the Court retains jurisdiction so long as the motion was filed within 30 days and remained undisposed. Nowhere in Illinois law must such a motion be adjudicated within 30 days, and Bartelstein has failed to demonstrate any statute or precedent requiring such a holding. In fact, the time to file a notice of appeal was extended upon Bank of New York's filing of its Section 2-1203(a) Motion "until 30 days after the Motion is *decided*." *Longo v. Globe Auto Recycling, Inc.*, 318 Ill. App. 3d 1028, 1033 (1st Dist. 2001) (emphasis added).

Penultimately, Bartelstein argues that her Petition for fees is not a motion directed against the judgment and the claim for fees is collateral to the action. As such, Bartelstein posits that her Petition for fees did not extend Bank of New York's time to file an appeal or a post-judgment motion. This is irrelevant to the Court's ruling today, so the Court will respectfully decline to opine as to the viability of such an argument. Also, the Court would like to point out that if Bartelstein's Petition for Fees is collateral to the judgment and the Court retains jurisdiction to hear the Petition, so long as the Petition was filed within 30 days, then for the same reasoning Bank of New York's Section 2-1203(b) Motion should have been heard. *Libertyville v. Bank of Waukegan*, 152 Ill. App. 3d 1066, 1072-73 (2nd Dist. 1987) ("the trial court retains jurisdiction to determine matters collateral or incidental to the judgment \*\*\* [c]ollateral or supplemental matters include those lying outside the issues in the appeal or arising subsequent to delivery of the judgment"); *People*

*ex rel. A.M. v. Herlinda M.*, 211 Ill App. 3d 957,964 (1st Dist. 1991) (“fee requests are generally collateral or incidental to the principal action”); *Herlehy v. Bistersky*, 407 Ill. App. 3d 878, 898 (1st Dist 2010) (“A circuit court has jurisdiction to entertain a motion for attorney fees filed within 30 days of the entry of the final judgment without regard to a previously filed notice of appeal”); *GMC v. Pappas*, 242 Ill. 2d 163, 174 (2011) (“a stay of judgment is collateral to the judgment and does not affect or alter the issues on appeal”). Because both the Petition and the Motion were filed timely on the 30th day after entry of the September 27, 2023, Order, and because both make requests collateral to the judgment, then regardless of whether a notice of appeal was filed, this Court retains jurisdiction to hear both matters. Since both were timely filed inside the 30-day window, both may be ruled upon. Lastly, this reduces to a moot point because upon Bank of New York filing its Section 2-1203(a) Motion, the time to file a notice of appeal was tolled anyways, and this Court retained jurisdiction over the *entire controversy* including, but not limited to, hearing and adjudicating Plaintiff’s Section 2-1203(a) Motion, Plaintiff’s Section 2-1203(b) Motion, Defendant’s Petition for Attorneys’ Fees, and Defendant’s instant motion as well. *Chicago Architectural Metals, Inc. v. Bush Construction Co.*, 2022 IL App (1st) 200587, ¶ 41 (“[t]he filing of a section 2-1203 motion will toll the time to appeal”).

Notwithstanding this point, if Bartelstein claims that this Court lacked jurisdiction to stay the September 27, 2023, Order, then how would the Court have jurisdiction to reconsider the November 16, 2023, Order at issue herein? Bartelstein

cannot have her cake and eat it too. Also, the Court would like to point out that even if Bartelstein is correct and this Court lacked jurisdiction to adjudicate Bank of New York's Section 2-1203(b) Motion on November 14, 2023, and then subsequently enter the Order on November 16, 2023—which she is not—Bartelstein forgets that her active participation in the case would have revested this Court with jurisdiction making such an argument moot. The Court did stay the September 27, 2023, Order over Bartelstein's objection and, if that ruling were entered on November 16, 2023, without jurisdiction as Bartelstein suggests, it would be of no moment. Bartelstein voluntarily chose to actively participate and file her own motion, the instant one. The resultant effect: revestment of jurisdiction in this Court through her voluntary active participation in the litigation regardless of whether this Court lacked jurisdiction. *See Lowenthal v. McDonald*, 367 Ill. App. 3d 919, 925 (1st Dist. 2006) ("it is not *consent* but *active participation* that reverts jurisdiction" (emphasis in original)).

### III. CONCLUSION

Accordingly, for these reasons, Bartelstein's Motion as it relates to reconsidering and vacating as void the Court's November 16, 2023, Order is hereby DENIED. The Court now returns to briefing Plaintiff's Section 2-1203(a) Motion to Reconsider this Court's September 27, 2023, Memorandum Opinion and Order and that portion of Bartelstein's Motion requesting the same is hereby GRANTED. *Sua sponte*, the Court also orders that briefing on Bartelstein's Verified Petition for Attorneys' Fees and Costs shall proceed as well.

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

- (1) Debbie Bartelstein's Motion to Reconsider and Vacate as Void Portion of November 14, 2023, Order Granting 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 Motion to Stay Enforcement of the September 27, 2023, Judgment Order and Setting a Briefing Schedule on Bank of New York's Motion to Reconsider is hereby DENIED in part and GRANTED in part;
  - (a) As to Bartelstein's Motion to Reconsider and Vacate as Void, the Motion is hereby DENIED;
    - (i) The Court's orders from its September 27, 2023, Memorandum Opinion and Order requiring Bank of New York to record a release of mortgage and extinguishing the Mortgage both remain stayed pending the Court's ruling on Plaintiff's Motion to Reconsider;
  - (b) As to Bartelstein's Motion to Set a Briefing Schedule on Bank of New York's Motion to Reconsider, the Motion is hereby GRANTED and such a briefing schedule shall be entered on the status date set *infra*;
- (2) *Sua sponte*, a briefing schedule on Bartelstein's Verified Petition for Attorneys' Fees and Costs shall be entered on the status date set *infra*; and
- (3) This matter is set for status on setting briefing schedules on Plaintiff's Motion to Reconsider and Defendant's Verified Petition for Attorneys' Fees and Costs on March 27, 2024, at 2:30 PM via Zoom at the below listed Zoom Information.

**Zoom Information:**

Meeting ID: 810 2556 7672

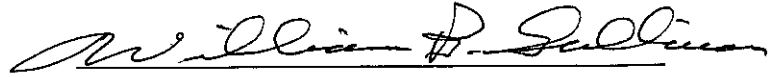
Passcode: 021601

Call-In: (312) 626-6799

**IT IS SO ORDERED.**

Date: March 18, 2024

ENTERED:



Honorable William B. Sullivan  
Cook County Circuit Judge

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

