

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE	:	Chapter 13
	:	
THOMAS JOHNSON,	:	
	:	Bankruptcy No. 19-10256-AMC
DEBTOR	:	
_____	:	

Ashely M. Chan, United States Bankruptcy Judge

ORDER

AND NOW, this 14th day of May, 2019, after an evidentiary hearing on March 12, 2019 resulting in the Court finding that secured creditor, Samuel Zewdi, engaged in egregious willful violations of the automatic stay, and upon consideration of Debtor's Itemization of Damages and Attorneys' Fees, Samuel Zewdi's response thereto, and after an evidentiary hearing on damages on April 23, 2019, it is hereby **ORDERED** and **DECREED** for the reasons stated in the accompanying Opinion that:

Debtor, Thomas Johnson, is awarded damages totaling **\$46,179.00**, which includes the following amounts:

- a. property damages and lost wages in the amount of \$11,179.00;
- b. emotional distress damages of \$15,000; and
- c. punitive damages of \$20,000;

And it is **FURTHER ORDERED** that the above listed damages shall be applied to reduce Samuel Zewdi's claim,¹ Claim Number 2, with the remainder to be paid directly to Debtor, Thomas Johnson;

¹ Fed. R. Civ. P. 69(a)(1), made applicable to bankruptcy proceedings through Fed. R. Bankr. P. 7069 and 9014, provides that federal courts must utilize judgment execution methods available under the state where the court is located. Pennsylvania has long recognized a common law right to set off mutual debts between parties, which is available even if the judgments were recovered in different courts. *U.S. Bank, N.A. v. Rosenberg*, 581 B.R. 424, 428

And it is **FURTHER ORDERED** that Samuel Zewdi's claim, Claim Number 2, in the amount of \$32,891.73 is hereby **DISALLOWED** and reduced to \$0.00;

And it is **FURTHER ORDERED** that Debtor, Thomas Johnson, has hereby **REDEEMED** the Property located at 6426 North Beechwood Street, Philadelphia, PA 19138;

And it is **FURTHER ORDERED** that title to the Property located at 6426 North Beechwood Street, Philadelphia, PA 19138 is hereby **TRANSFERRED** into the name of Debtor, Thomas Johnson;

And it is **FURTHER ORDERED** that Samuel Zewdi, and all persons claiming under him, are forever **BARRED** from asserting any right, lien, title, or interest in the premises identified as 6426 North Beechwood Street, Philadelphia, PA 19138;

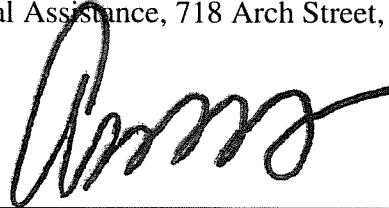
And it is **FURTHER ORDERED** that the Commissioner of the Department of Records of Philadelphia County is hereby **DIRECTED** to record a certified copy of this Order, without payment of transfer tax, to properly acknowledge Debtor, Thomas Johnson, as the sole owner of the Property located at 6426 Beechwood Street, Philadelphia, PA 19138;

And it is **FURTHER ORDERED** that Samuel Zewdi shall, within thirty (30) days of this Order, pay \$13,287.27 directly to Debtor, Thomas Johnson, via his attorney;

And it is **FURTHER ORDERED AND DECREED** that Philadelphia Legal Assistance is awarded \$24,279 in attorneys' fees and costs;

(E.D. Pa. 2018). The judgment debts between Samuel Zewdi and debtor, Thomas Johnson, are clearly mutual, as they are between the same parties, in the same right, and in the same capacity, making the application of this damage award to reduce Samuel Zewdi's claim appropriate. *See id.* For "[i]t would be ironic indeed if debtors were to collect actual and punitive damages [on account of willful stay violations] from these creditors...only to return some portion in payment on a secured claim under the chapter 13 plan. Even paying such creditors...from debtors' postconfirmation income, while damage awards remain outstanding, is not particularly sensible." *In re Andrus*, No. 04-00061, 2004 WL 2216493, at *15 (Bankr. D. Idaho Sept. 23, 2004). Accordingly, reducing Samuel Zewdi's claim by the amount of this damage award is particularly justified. The Court also notes that the plain language of §553(a) governs when *creditors* in a bankruptcy case may exercise their prepetition set off rights, not when a *debtor* in a bankruptcy case may do so in a situation such as the one presently before the Court in which the *debtor* seeks to reduce the creditor's claim by the amount of the damage award. With no specific provisions governing this scenario, the Court applies relevant state law.

And it is **FURTHER ORDERED** that Samuel Zewdi shall, within thirty (30) days of this Order, pay \$24,279 directly to Philadelphia Legal Assistance, 718 Arch Street, Suite 300N, Philadelphia, PA 19106.

A handwritten signature in black ink, appearing to read 'Ashely M. Chan', written over a horizontal line.

Honorable Ashely M. Chan
United States Bankruptcy Judge