



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE TILE SHOP HOLDINGS, INC.) Consol. C.A. No. 2019-0892-SG
LITIGATION)
_____)

PROPOSED ORDER AND FINAL JUDGMENT

WHEREAS, a consolidated stockholder action is pending in this Court, entitled *In re Tile Shop Holdings, Inc. Litigation*, Consol. C.A. No. 2019-0892-SG (the “Action”);

WHEREAS, (a) plaintiffs K-Bar Holdings LLC and Wynnefield Capital, Inc. (together, “Plaintiffs”), on behalf of themselves and the Settlement Class (defined below) and derivatively on behalf of the Company (defined below); (b) Cabell Lolmaugh, Robert A. Rucker, Peter J. Jacullo III, Peter H. Kamin, Todd Krasnow and Philip B. Livingston (collectively, the “Individual Defendants”); and (c) Nominal Defendant Tile Shop Holdings, Inc. (“Tile Shop” or the “Company” and, together with the Individual Defendants, “Defendants”) (Plaintiffs and Defendants, together, the “Parties”) have entered into a Stipulation of Settlement dated August 7, 2020 that provides for a complete dismissal with prejudice of the claims asserted against Defendants in the Action on the terms and conditions set forth in the Stipulation, subject to the approval of this Court (the “Settlement”);

WHEREAS, by Order dated August 12, 2020 (the “Scheduling Order”), this Court (a) preliminarily certified the Settlement Class solely for

purposes of effectuating the Settlement; (b) ordered that notice of the proposed Settlement be provided to potential Settlement Class Members and Current Tile Shop Stockholders; (c) provided Settlement Class Members and Current Tile Shop Stockholders with the opportunity to object to the proposed Settlement; and (d) scheduled a hearing regarding final approval of the Settlement;

WHEREAS, the Court conducted a hearing on October 12, 2020 (the “Settlement Hearing”) to consider, among other things: (a) whether the Settlement Class should be permanently certified by the Court; (b) whether the terms and conditions of the Settlement are fair, reasonable, and adequate to the Settlement Class and the Company, and should therefore be approved; (c) whether a Judgment should be entered dismissing the Action with prejudice as against Defendants; (d) whether the proposed Plan of Allocation of the Net Cash Settlement Fund is fair and reasonable, and should therefore be approved; and (e) whether the application by Lead Counsel for an award of attorneys’ fees, reimbursement of litigation expenses, and incentive awards for Plaintiffs should be approved; and

WHEREAS, it appearing that due notice of the hearing has been given in accordance with the Scheduling Order; the Parties having appeared by their respective attorneys of record; the Court having heard and considered evidence in support of the proposed Settlement; the attorneys for the respective Parties having been heard; an opportunity to be heard having been given to all other persons or

entities requesting to be heard in accordance with the Scheduling Order; the Court having determined that notice to members of the Settlement Class and Current Tile Shop Stockholders was adequate and sufficient; and the entire matter of the proposed Settlement having been heard and considered by the Court;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, this 12th day of October, 2020, as follows:

1. **Definitions**: Unless otherwise defined herein, capitalized terms used herein shall have the same meanings given to them in the Stipulation.
2. **Jurisdiction**: The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over Plaintiffs, Defendants, and each of the Settlement Class Members and Current Tile Shop Stockholders.
3. **Final Class Certification for Settlement Purposes**: The Court hereby finally certifies, for the purposes of the Settlement only, the Action as a non-opt out class action pursuant to Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2), on behalf of a Class consisting of all record and beneficial holders of Tile Shop Common Stock as of October 18, 2019. Excluded from the Settlement Class are Defendants; any affiliate (as defined in 17 C.F.R. § 230.405) of the Individual Defendants; any parents, affiliates, or subsidiaries of the Company; any officer or director of the Company; members of the immediate families of the Individual

Defendants and of any officer or director of the Company; Defendants' directors' and officers' liability insurance carriers and any parents, affiliates, or subsidiaries thereof; persons who held shares of Tile Shop common stock that were borrowed as part of a short sale transaction (only with respect to their holdings in such borrowed shares); and the legal representatives, agents, heirs, successors, and assigns of any such excluded Person.

4. For the purposes of the Settlement only, the Court hereby finally appoints Plaintiffs as representatives for the Settlement Class and Lead Counsel as counsel for the Settlement Class. Plaintiffs and Lead Counsel have fairly and adequately represented the Settlement Class both in terms of litigating the Action and for purposes of entering into and implementing the Settlement.

5. **Class Findings:** Solely for purposes of the proposed Settlement of this Action, the Court finds that each element required for certification of the Settlement Class pursuant to Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2) has been met in that: (a) the Settlement Class Members are so numerous that their joinder in the Action would be impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of Plaintiffs are typical of the claims of the Settlement Class; (d) in connection with both the prosecution of the Action as well as the Settlement, Plaintiffs and Lead Counsel have and will fairly and adequately represent and protect the interests of the Settlement Class; (e) the prosecution of

separate actions by individual Settlement Class Members would create a risk of inconsistent adjudications that would establish incompatible standards of conduct for Defendants; and (f) as a practical matter, the disposition of the Action would influence the disposition of any pending or future identical cases brought by other Settlement Class Members.

6. **Notice:** The Court finds that the dissemination of the Notice and the publication of the Summary Notice: (a) were implemented in accordance with the Scheduling Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members and Current Tile Shop Stockholders of: (i) the pendency of the Action; (ii) the effect of the proposed Settlement (including the releases to be provided thereunder); (iii) Lead Counsel's application for an award of attorneys' fees, reimbursement of litigation expenses, and incentive awards for Plaintiffs; (iv) their right to object to any aspect of the Settlement, the Plan of Allocation, and/or Plaintiffs' counsel's application for attorneys' fees, litigation expenses, and incentive awards; and (v) their right to appear at the Settlement Hearing; (d) constituted due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of Court of Chancery Rules 23 and 23.1, the United

States Constitution (including the Due Process Clause), and all other applicable law and rules.

7. **Final Settlement Approval and Dismissal of Claims:** Pursuant to, and in accordance with, Court of Chancery Rules 23(e) and 23.1(c), this Court hereby fully and finally approves the Settlement set forth in the Stipulation in all respects (including, without limitation: the Settlement consideration; the Released Claims; and the dismissal with prejudice of the claims asserted against Defendants in the Action), and finds that the Settlement is, in all respects, fair, reasonable, and adequate to the Settlement Class and the Company. The Parties are directed to implement, perform, and consummate the Settlement in accordance with the terms and provisions contained in the Stipulation, which this Judgment incorporates and makes a part hereof.

8. The Action is hereby dismissed with prejudice and all of the claims asserted against Defendants in the Action by Plaintiffs and the other Settlement Class Members are hereby dismissed with prejudice. The Parties shall bear their own fees, costs, and expenses, except as provided in Paragraphs 13-15 below or as otherwise provided in the Stipulation and the Scheduling Order.

9. **Binding Effect:** The terms of the Stipulation and of this Judgment shall be forever binding on Defendants, Plaintiffs, and all Settlement Class Members (regardless of whether or not any individual Settlement Class Member submits a

Claim Form, seeks or obtains a distribution from the Net Cash Settlement Fund, was entitled to receive a distribution from the Net Cash Settlement Fund, or in fact receives a distribution from the Net Cash Settlement Fund).

10. **Releases:** The releases set forth in Paragraphs 4 and 5 of the Stipulation, together with the definitions contained in Paragraph 1 of the Stipulation relating thereto, are expressly incorporated herein in all respects. The releases are effective as of the Effective Date. Accordingly, this Court orders that:

(a) Without further action by anyone, and subject to Paragraph 11 below, upon the Effective Date of the Settlement, Plaintiffs and the Settlement Class will, to the fullest extent permitted by law, release and forever discharge the Released Defendants' Persons from any and all Released Plaintiffs' Claims; provided, however, that the release of the Released Plaintiffs' Claims shall not include the release of the right to enforce any confidentiality stipulation or other term agreed upon or referenced in the Settlement.

(b) Without further action by anyone, and subject to Paragraph 11 below, upon the Effective Date of the Settlement, Defendants, on behalf of themselves and, to the fullest permitted by law, their respective successors in interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns or transferees, and any person or entity acting for or on behalf of each of them, will release the Released Plaintiffs' Persons from any and all Released

Defendants' Claims; provided, however, that the release of the Released Defendants' Claims shall not include the release of the right to enforce any confidentiality stipulation or other term agreed upon or referenced in the Settlement.

11. Notwithstanding Paragraphs 10(a)-(b) above, nothing in the Stipulation or in this Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Stipulation or this Judgment.

12. **No Admission of Wrongdoing:** Neither this Judgment, the provisions contained in the Stipulation, nor any negotiations, discussions, and proceedings in connection with the Stipulation, shall be deemed or constitute a presumption, concession, or admission by any party to the Action of any fault, liability or wrongdoing as to any facts or claims alleged or asserted in the Action and shall not be interpreted, construed, deemed, involved, offered, or received in evidence or otherwise used by any person in the Action, or in any other action or proceeding, whether civil, criminal or administrative, except in connection with any proceeding to enforce the terms of the Stipulation.

13. **Award of Attorneys' Fees, Litigation Expenses, and Incentive Awards for Plaintiffs:** Plaintiffs' Counsel are hereby awarded attorneys' fees in the amount of 25% of the Cash Settlement Fund and reimbursement of litigation expenses in the amount of \$ 625,000 (the "Cash Settlement Fund Award"), which sums the Court finds to be fair and reasonable. The Cash Settlement Fund

Award shall be paid out of the Cash Settlement Fund in accordance with the terms of the Stipulation.

14. Plaintiffs K-Bar Holdings LLC and Wynnefield Capital, Inc. are each hereby awarded an incentive award of \$ 25,000, to be paid out of the Cash Settlement Fund Award, which sums the Court finds to be fair and reasonable.

15. Plaintiffs' Counsel are also hereby awarded \$ 2.7M in attorneys' fees for achieving the non-monetary benefits achieved under the Stipulation (the "Non-Monetary Benefits Award," and collectively with the Cash Settlement Fund Award, the "Fee and Expenses Award"). Defendants shall cause their Insurers to pay the Non-Monetary Benefits Award to Lead Counsel in accordance with the terms of the Stipulation.

16. Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in a manner which it, in good faith, believe reflects the contributions of such counsel to the institution, prosecution, and settlement of the claims asserted in the Action.

17. No proceedings or court order with respect to the award of attorneys' fees and expenses to Plaintiffs' Counsel or incentive awards to Plaintiffs shall in any way affect or delay the finality of this Judgment (or otherwise preclude this Judgment from being entitled to preclusive effect), and shall not affect or delay the Effective Date of the Settlement.

18. **Plan of Allocation of Net Cash Settlement Fund:** The Court hereby finds and concludes that the formula for the calculation of the claims of Settlement Class Members as set forth in the Plan of Allocation provides a fair and reasonable basis upon which to allocate the proceeds of the Net Cash Settlement Fund among Settlement Class Members with due consideration having been given to administrative convenience and necessity. No proceedings or court order with respect to approval of the Plan of Allocation shall in any way affect or delay the finality of this Judgment (or otherwise preclude this Judgment from being entitled to preclusive effect), and shall not affect or delay the Effective Date of the Settlement.


19. **Retention of Jurisdiction:** Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over the Parties and all Settlement Class Members and Current Tile Shop Stockholders for purposes of the administration, interpretation, implementation, and enforcement of the Settlement, and all other matters relating to the Action and the Settlement.

20. **Modification of the Stipulation:** Without further approval from the Court, the Parties are hereby authorized to agree to and adopt such amendments or modifications of the Stipulation or any exhibits attached thereto to effectuate the Settlement that: (a) are not materially inconsistent with this Judgment; and (b) do not materially limit the rights of Settlement Class Members in connection with the

Settlement. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any provisions of the Settlement.

21. **Termination of Settlement:** If the Settlement is terminated as provided in the Stipulation or the Effective Date of the Settlement otherwise fails to occur, this Judgment shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Stipulation, and this Judgment shall be without prejudice to the rights of the Parties and the Settlement Class, and the Parties shall revert to their respective positions in the Action as of immediately prior to the Parties' June 30, 2020 agreement on the principal terms of the Settlement.

22. **Entry of Final Judgment:** There is no just reason to delay the entry of this Judgment as a final judgment in the Action. Accordingly, the Register in Chancery is expressly directed to immediately enter this final judgment in the Action.



Vice Chancellor Sam Glasscock III