



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE TILE SHOP HOLDINGS, INC.
LITIGATION

Consol. C.A. No. 2019-0892-SG

**UNSWORN AFFIDAVIT OF NELSON OBUS
PURSUANT TO 10 DEL. C. § 3927 AND THE DELAWARE
SUPREME COURT ADMINISTRATIVE ORDER NO. 3**

I, Nelson Obus, do hereby state as follow:

1. I am the co-founder and President of Wynnefield Capital, Inc. (“Wynnefield”), a plaintiff in the above-captioned action (“Action”) and a continuous holder of the common stock of Tile Shop Holdings, Inc. (“Tile Shop”) during all relevant times, including to the present.

2. I am a resident of New Jersey, and of full legal age.

3. I submit this affidavit under penalty of perjury in accordance with Court of Chancery Rule 23.1(c) in support of final approval of the (i) settlement embodied in the Stipulation and Agreement of Compromise, Settlement and Release, dated August 7, 2020 (“Settlement”), and (ii) the application for an award of attorneys’ fees and expenses, and incentive award (“Fee Applications”).

4. Pursuant to Court of Chancery Rules 23 (aa) and 23.1(b), I have not received, been promised or offered, and will not accept, any form of compensation, directly or indirectly, for prosecuting or serving as a representative party in this

derivative action except:

a. Such damages or other relief as the Court may award Wynnefield as a member of the class;

b. Such fees, costs or other payments as the Court expressly approves to be paid to or on behalf of Wynnefield; or

c. reimbursement, paid by my attorneys, of actual and reasonable out-of-pocket expenditures incurred directly in connection with the prosecution of this action.

5. As detailed below, I have remained informed concerning the progress of the Action and actively involved in decision making through meetings, regular phone calls and email communications with my counsel, and responded to their requests for assistance and feedback with respect to the Action to the best of my ability.

6. By way of background, I received a B.A. from New York University and an M.A. in Political Science from Brandeis University. In 1981, I began working as an analyst at the investment bank Lazard Freres & Co (“Lazard”). When I left Lazard in 1992, I was the Director of Sell Side Research in the Equity Sales Department. Thereafter, I co-founded Wynnefield, a New York based hedge fund focused on U.S. public equity markets and exchange traded funds. Our fund is a value investor, specializing in U.S. small cap companies. I have been elected to, and continue to serve

as a director on, several board of directors of public companies. At all times and presently I manage the investments of Wynnefield.

6. On October 22, 2019, the board of directors of Tile Shop (the “Board”) announced its decision to: (i) go dark (“Go Dark” or “Going Dark”) by delisting and deregistering the Company’s common stock from NASDAQ and U.S. Securities and Exchange Commission (“SEC”), respectively; (ii) suspend the Company’s quarterly dividend; (iii) discontinue the Company’s share repurchase program; and (iv) announce the resignation of an outside director who had tendered his resignation (the “Go Dark Announcement”). The Company’s stock price plummeted over 60% after the Go Dark Announcement. Thereafter, I learned from public disclosures in late October 2019 that Defendants Peter Kamin and Peter Jacullo were rapidly accumulating Tile Shop stock on the open market. Based on my over 40 years of experience with the public markets and personal experience as a director of public companies, I was extremely troubled by the Go Dark Announcement and subsequent apparent street sweep by Defendant Kamin and Defendant Jacullo, which appeared to be a play to take control of the Company.

7. In early November 2019, Wynnefield was referred to Bernstein, Litowitz, Berger & Grossmann LLP (“BLB&G) from our corporate counsel, Stephen Fraidin (Partner – Cadawalder, Wickersham & Taft LLP). Thereafter, Wynnefield retained BLB&G to represent Wynnefield in a lawsuit seeking to enjoin

the Board from causing the Company to Go Dark and buying control of the Company on the open market, and to hold the Board accountable for breaches of fiduciary duty in connection to the Go Dark and subsequent stock purchases.

8. In November 2019, I also discussed Wynnefield's and my personal analyses and research about the Company, the Board, the Go Dark and Go Dark Announcement with BLB&G. Based in part on my analyses and their own, BLB&G prepared a stockholder class action and derivative complaint as well as motions for temporary restraining order and expedited proceedings. I reviewed and authorized the filings of the complaint and the motions in early November 2019.

9. On November 8, 2019, Wynnefield received up-to-the-minute status reports of the Court's hearing on the temporary restraining order and expedition motions.

10. After the Court granted the temporary restraining order and expedition motions, Wynnefield representatives or I were in contact with BLB&G on at least a weekly basis to receive updates and help analyze facts during expedited proceedings. Wynnefield representatives and I participated in multiple calls and meetings with BLB&G concerning Plaintiffs' discovery requests propounded on Defendants and third-parties. Wynnefield representatives and I analyzed and reviewed our experts' opinions. Wynnefield representatives and I also reviewed the depositions transcripts and reviewed and authorized all case filings during the expedited phase of the

litigation including, but not limited to, Plaintiffs' February 7, 2020 brief in support of Plaintiffs' preliminary injunction application.

9. In December 2019 and January 2020, Wynnefield representatives or I participated in multiple calls with counsel concerning Defendants' discovery requests, the preparation of responses to those requests, and the process for collecting documents from me responsive to those requests.

10. Wynnefield representatives and I then participated for several days in a remote document collection with BLB&G and their in-house electronic discovery experts during which my responsive documents and my co-founder's responsive documents were collected.

11. On January 22, 2020, I sat for my deposition, which lasted for three and a half hours.

12. From February 2020 to August 7, 2020, Wynnefield representatives or I continued to be in contact with BLB&G on at least a weekly basis to receive updates and help analyze facts during trial preparation. Wynnefield representatives or I participated in multiple calls and meetings with BLB&G concerning the additional discovery during the trial phase. Wynnefield representatives and I again analyzed and reviewed our expert's opinions. Wynnefield representatives and I reviewed the case depositions transcripts and reviewed and authorized all case filings during this phase of the litigation.

13. Also, during this time, the parties began mediation. In May 2020, Wynnefield representatives and I had multiple calls with counsel concerning mediation strategy and to assist in settlement negotiations. On June 17, 2020, a Wynnefield representative participated in the first full day mediation session with Vice Chancellor McCormick. Thereafter, Wynnefield representatives or I continued to have daily calls with BLB&G concerning mediation strategy and settlement negotiations. On June 30, 2020, a Wynnefield representative participated in the second full day mediation session with Vice Chancellor McCormick during which Wynnefield received the Vice Chancellor's recommendation that the Action settle for a cash payment of \$12 million minus attorneys' fees and expenses for the Class and additional non-monetary terms to improve the corporate governance at Tile Shop that would address and prevent the wrongdoing alleged in the Action. Based on Wynnefield's discussions with counsel concerning the results of discovery, our expert's opinions concerning damages, the relevant legal principles, and the potential risks of a trial, Wynnefield authorized acceptance of Vice Chancellor McCormick's proposal. Wynnefield representatives and I have since communicated with BLB&G concerning the settlement stipulation and approval process.

14. In total, I estimate that Wynnefield has devoted approximately 200 hours to the Action in analyzing the Go Dark and Tile Shop public filings, communicating with BLB&G, reviewing the discovery record, reviewing the expert

reports, attending hearings and mediation sessions, document collection, preparation for and attendance at my deposition, review and execution of documents submitted for my approval and signature, and review of email correspondence from BLB&G.


14. For my efforts on behalf of Tile Shop and the Class, I respectfully request an award in the amount of \$25,000 be paid to Wynnefield out of the fees and expenses awarded to counsel.

15. Based on my knowledge of the facts, and my ongoing discussions with counsel as described above concerning the strength of our claims versus the risks of a trial, I fully support the Settlement as a fair and reasonable resolution of the Action.

16. I approve and support the Fee Applications of counsel for an award of fees and expenses in the combined amount of \$5.7 million.

Pursuant to 10 *Del. C.* § 3927 and the Delaware Supreme Court Administrative Order No. 3, I declare under penalty of perjury under the law of Delaware that the foregoing is true and correct.

Executed on this 22nd day of September, 2020.

By: 

Nelson Obus, President
Wynnefield Capital, Inc.