



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 KEVIN BARNES
PURSUANT TO 10 DEL. C. § 3927 AND THE DELAWARE
SUPREME COURT ADMINISTRATIVE ORDER NO. 3**

I, Kevin Barnes, do hereby state as follow:

1. I am Principal of K-BAR Holdings, LLC (“K-BAR”), 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 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 applications 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 K-BAR 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 K-BAR; 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 responding to their requests for assistance and feedback with respect to the Action to the best of my ability.

6. By way of background, I am a private investor with previous professional experience in securities investing, corporate restructurings, and public/private market capital raising. K-BAR primarily invests in publicly traded securities and mineral interests. At all times and presently I manage the investments of K-BAR.

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 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 investing experience, 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 November 2019, I retained Bernstein, Litowitz, Berger & Grossmann LLP (“BLB&G”) to represent K-BAR 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 discussed my personal analyses and research about the Company, the Board, the Go Dark, and the 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 filing of the complaint and the

motions in early November 2019.

9. On November 8, 2019, I met with counsel and attended the Court's hearing in Georgetown, Delaware on the temporary restraining order and expedition motions.

10. After the Court granted the temporary restraining order and expedition motions, I was in contact with BLB&G on at least a weekly basis to receive updates and help analyze facts during expedited proceedings. I participated in multiple calls and in person meetings with BLB&G concerning Plaintiffs' discovery requests propounded on Defendants and third-parties. I analyzed and reviewed our experts' opinions. I also reviewed all case 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, 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. I then participated for several days in remote and in-person document collection with BLB&G and their in-house electronic discovery experts during which my responsive documents were collected.

11. In January 2020, I spent multiple hours meeting with BLB&G preparing for my deposition. On January 17, 2020, I traveled to Defendants' counsel's office and sat for my deposition, which lasted almost seven hours.

12. From February 2020 to August 7, 2020, 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. I participated in multiple calls and in person meetings with BLB&G concerning the additional discovery during the trial phase. I again analyzed and reviewed our expert's opinions. I reviewed all 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, I had multiple calls with counsel concerning mediation strategy and to assist in settlement negotiations. On June 17, 2020, I participated in the first full day mediation session with Vice Chancellor McCormick. Thereafter, I continued to have daily calls with BLB&G concerning mediation strategy and settlement negotiations. On June 30, 2020, I participated in the second full day mediation session with Vice Chancellor McCormick during which I 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 my 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, I authorized acceptance of Vice Chancellor McCormick's proposal. I have since communicated with BLB&G on an almost daily basis concerning the settlement stipulation and approval process.

14. I also note that since the since the close of trading on October 22, 2019 (the Go Dark Announcement) to August 31, 2020 (the date Tile Shop announced a preliminary agreement of the settlement amount and governance improvements), Tile Shop common stock increased 2.2x from \$1.13 to \$2.49 per share.

15. In total, I estimate that I have devoted approximately 289 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, preparing for and attending my deposition, reviewing 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 K-BAR out of the fees and expenses awarded to Plaintiffs' 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 18th day of September, 2020.

By: Kevin Barnes
Kevin Barnes, Principal
K-BAR Holdings, LLC