

13-CI-00452

JEFFERSON CIRCUIT COURT  
DIVISION FOUR (4)  
HON. CHARLES L. CUNNINGHAM, JR.

STEPHEN J. DANNIS, *et al.*,

PLAINTIFFS

**ORDER AND FINAL JUDGMENT**

J. D. NICHOLS, *et al.*

DEFENDANTS

The Stipulation and Agreement of Compromise, Settlement and Release, dated February 4, 2014 (the "Stipulation"), of the above class action (the "Action"), and the settlement contemplated thereby (the "Settlement") having been presented at the Final Settlement Hearing on April 24, 2014, pursuant to the Preliminary Approval Order entered herein on February 6, 2014 (the "Preliminary Approval Order"), which Stipulation was entered into by plaintiffs in the Action (the "Plaintiffs"), through Plaintiffs' Counsel, and by defendants NTS Realty Holdings Limited Partnership ("NTS" or the "Company"), NTS Realty Capital, Inc., J. D. Nichols, Brian Lavin, NTS Merger Parent, LLC, Mark Anderson, John Daly Sr., and John Lenihan (collectively "Defendants," and together with Plaintiffs, the "Parties") in the Action and which is incorporated herein by reference; and the Jefferson Circuit Court (the "Court") having determined that notice of said hearing was given to the Class in accordance with the Preliminary Approval Order and that said notice was adequate and sufficient; and the Parties having appeared by their attorneys of record; and the attorneys for the respective Parties having been heard in support of the Settlement of the Action, and an opportunity to be heard having been given to all other persons desiring to be heard as provided in the notice; and the entire matter of the Settlement having been considered by the Court;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, this 24<sup>th</sup> day of APRIL, 2014, that:

1. The Notice of Pendency of Consolidated Class Action, Proposed Settlement of Consolidated Class Action, Settlement Hearing and Right to Appear (“Notice”) has been given to the Class (as defined below) pursuant to and in the manner directed by the Preliminary Approval Order, proof of the mailing of the Notice has been filed with the Court and a full opportunity to be heard has been offered to all parties to the Action, the Class and persons in interest. The form and manner of the Notice is hereby determined to have been the best notice practicable under the circumstances and to have been given in full compliance with each of the requirements of Kentucky Rule of Civil Procedure 23 and due process, and it is further determined that all members of the Class are bound by the Order and Final Judgment herein.

2. The Court hereby finds, pursuant to the Kentucky Rules of Civil Procedure 23.01 and 23.02, as follows:

a. that (i) the Class, as defined below, is so numerous that joinder of all members is impracticable, (ii) there are questions of law and fact common to the Class, (iii) the claims of Plaintiffs are typical of the claims of the Class, and (iv) Plaintiffs and Plaintiffs’ Lead Counsel have fairly and adequately protected the interests of the Class;

b. that the requirements of Kentucky Rules of Civil Procedures 23.01 and 23.02(a) and 23.02(b) have been satisfied;

c. that the requirements of the Kentucky Rules of Civil Procedure and due process have been satisfied in connection with the Notice;

d. that the Action is hereby certified as a non-opt out class pursuant to Kentucky Rules of Civil Procedure 23.01, 23.02(a) and 23.02(b), defined as: Any and all record holders and beneficial owners of NTS Units, and any holder of any current or former right, upon due surrender of any equity or interest in a predecessor partnership that was merged with and

into NTS and delivery of related documentation in connection with such surrender, to exchange such equity or interest for NTS Units, other than the Excluded Unitholders, their respective successors in interest, successors, predecessors in interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them, together with their predecessors and successors and assigns, who held Units of NTS and such rights at any time between December 31, 2012 and the date of final approval; and

e. that Plaintiffs are hereby certified as the Class representatives, and Counsel are certified as Lead Class Counsel.

3. The Settlement is found to be fair, reasonable and adequate and in the best interests of the Class, and it is hereby approved. The Parties are hereby authorized and directed to comply with and to consummate the Settlement in accordance with its terms and provisions.

4. This Order and Final Judgment shall not constitute any evidence or admission by any of the Parties herein that any acts of wrongdoing have been committed by any of the Parties to the Action and should not be deemed to create any inference that there is any liability therefor.

5. The Action is hereby dismissed with prejudice in its entirety as to the Defendants and against Plaintiffs and all other members of the Class on the merits and, except as provided in the Stipulation, without costs.

6. This Order provides for the full and complete dismissal with prejudice of the Actions, and the settlement and release of, and a permanent injunction barring, any claims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, duties, suits, costs, expenses, matters and issues known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or

unmatured, accrued or unaccrued, apparent or unapparent, that have been, could have been, or in the future can or might be asserted in any court, tribunal or proceeding (including but not limited to any claims arising under federal, state, foreign or common law, including the federal securities laws and any state disclosure law), by or on behalf of Plaintiffs or any member of the Class, whether individual, direct, class, derivative, representative, legal, equitable, or any other type or in any other capacity (collectively, the “Releasing Persons”) against NTS, Realty Capital, NTS Realty Partners, LLC, J.D. Nichols, Brian F. Lavin, Parent, Merger Sub, NTS Development Company, NTS Management Company, Mark D. Anderson, John P. Daly, Sr., and John Lenihan, or any of their families, parent entities, controlling persons, associates, affiliates or subsidiaries and each and all of their respective past or present officers, directors, stockholders, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, entities providing fairness opinions, underwriters, brokers, dealers, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, managers, joint ventures, personal or legal representatives, estates, administrators, predecessors, successors and assigns (collectively, the “Released Persons”), which have arisen, could have arisen, arise now or hereafter out of or relating in any manner to the acts, events, facts, matters, transactions, occurrences, statements, representations, misrepresentations or omissions or any other matter whatsoever set forth in or otherwise related, directly or indirectly, to the allegations in the Actions, claims of mismanagement or self-dealing against the management of NTS, the Original Merger Agreement, the Amended Merger Agreement, the Proposed Transactions, or disclosures made in connection therewith (including the adequacy and completeness of such disclosures)

(collectively, the “Settled Claims”); however, the Settled Claims shall not include any claims to enforce the Settlement.

7. Defendants and their Released Persons are deemed to have, and by operation of this Order and Final Judgment have, fully, finally and forever released, relinquished and discharged Plaintiffs, each and all members of the Class, and Plaintiffs’ counsel from all claims (including unknown claims) arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement or resolution of the Actions or the Settled Claims.

8. The release contemplated by this Stipulation extends to claims that Plaintiffs, for themselves and on behalf of the Class, do not know or suspect to exist at the time of the release, which if known, might have affected the decision to enter into the release or to object or not to object to the Settlement. Plaintiffs and each member of the Class, shall be deemed to waive, and shall waive and relinquish to the fullest extent permitted by law, any and all provisions, rights and benefits conferred by any law of the United States or any state or territory of the United States, or principle of common law, or any other law, which governs or limits a person’s release of unknown claims; further that (i) the Plaintiffs, for themselves and on behalf of the Class, shall be deemed to waive, and shall waive and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code which provides as follows:

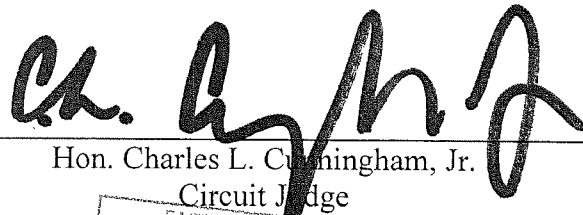
A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR

(ii) Plaintiffs, for themselves and on behalf of the Class, also shall be deemed to waive any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, or any other law, which is similar, comparable or equivalent

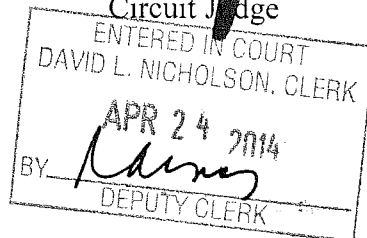
to California Civil Code § 1542; and (iii) Plaintiffs, for themselves and on behalf of the Class, acknowledge that members of the Class may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention, as Plaintiffs and on behalf of the Class, to fully, finally and forever settle and release any and all claims released hereby, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery or existence of such additional or different facts.

9. Plaintiffs' Counsel are hereby awarded attorneys' fees in the amount of \$ 2,220,466.00, which amount the Court finds to be fair and reasonable, and reimbursement of Plaintiffs' Counsel's expenses in the amount of \$ 123,929.88 is hereby approved, which amounts shall be paid in accordance with the terms of the Stipulation.

10. Plaintiffs' application for incentive awards is granted in the amount of \$ 50,000, in recognition of Plaintiffs' efforts in assisting in the creation of the Settlement Payment. The award shall be divided as follows: plaintiff R. Jay Tejera is awarded \$ 25,000, plaintiff Gerald A. Wells is awarded \$ 12,500 and plaintiffs Stephen and Sharon Dannis are awarded a total of \$ 12,500.

  
Hon. Charles L. Cunningham, Jr.  
Circuit Judge

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OF JEFFERSON CIRCUIT COURT  
DAVID L. NICHOLSON, CLERK

DAVID L. NICHOLSON, CLERK  
BY FH D.C.