

ORIGINAL

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FILED
JAN 18 2007

6 [Proposed] Attorneys for Debtor and Debtor in Possession

ENTERED
JAN 19 2007
CLERK, U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
Deputy Clerk

8 UNITED STATES BANKRUPTCY COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 SAN FERNANDO VALLEY DIVISION

11 In re
12 OWNIT MORTGAGE SOLUTIONS, INC.,
13 Debtor

Case No.: SV-06-12579 KT
Chapter 11

~~PROPOSED~~ ORDER
AUTHORIZING AND APPROVING
PROCEDURES FOR SALE OR
ABANDONMENT OF DEBTOR'S DE
MINIMIS ASSETS PURSUANT TO 11
U.S.C. §§ 105, 363(b) AND (f), AND
554

18 Upon the "Motion of the Debtor for An Order Authorizing and Approving Procedures for
19 the Sale or Abandonment of the Debtors' De Minimis Assets Pursuant to 11 U.S.C. §§ 105, 363(b)
20 and (f), and 554" (the "Motion"), filed by the above-captioned debtor and debtor in possession (the
21 "Debtor"); the Court having reviewed the Motion and any objections and responses thereto,
22 including the limited response filed by, and the comments on the record by, the Official Committee
23 of Unsecured Creditors; the Court finding that (a) the Court has jurisdiction over this matter
24 pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. §
25 157(b), and (c) notice of the Motion and the hearing thereon was sufficient under the
26 circumstances; the Court having determined that the legal and factual bases set forth in the Motion
27 establish just cause for the relief granted herein; and it appearing that the relief requested is in the
28 best interest of the Debtor's estate;

PACHULSKI STANG ZIEHL YOUNG JONES & WEINTRAUB LLP
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

1 IT IS HEREBY ORDERED THAT¹:

2 1. The Motion is GRANTED as modified herein.

3 2. As used in this Order, "Personal Property" means the Debtor's office furniture,
4 fixtures, office equipment, telecommunications-related equipment, and other like-kind personal
5 property of relatively de minimis or limited value and shall not include, under any circumstances,
6 any of the Debtor's books and records, intellectual property, goodwill, electronic data, or other
7 information in whatever form such information may be captured (the foregoing excluded property,
8 the "Intangible Personal Property").

9 3. Prior to the Sale or Abandonment of any Personal Property, the Debtor will use
10 reasonable efforts to inform the Committee of its inventory of Personal Property, including the
11 Debtor's estimated value of such Personal Property.

12 4. The Debtor is authorized, but not required, pursuant to sections 363(b) and 363(f) of
13 the Bankruptcy Code, to sell the Personal Property in accordance with the following Procedures:

14 (i) With regard to Sales of Personal Property in any individual transaction or
15 series of transactions to a single buyer or a group of related buyers (excluding transactions with
16 "insiders," if any, as defined in section 101 of the Bankruptcy Code) with a selling price equal to
17 or less than \$20,000 (a "Level 1 Sale"), the Debtor, subject to its obligations set forth in paragraph
18 8 herein, shall be permitted to accept and consummate any offer that, in its reasonable business
19 judgment, is (i) a fair and reasonable offer for such Personal Property and (ii) is in the best
20 interests of the Debtor's estate, without providing notice to any other party or receiving further
21 Court order. Such Sales shall be free and clear of Liens, if any, with such Liens to attach to the net
22 Sale proceeds with the same validity, and to the same extent and priority as they attached to the
23 Personal Property immediately prior to the Sale.

24 (ii) With regard to Sales of Personal Property in any individual transaction or
25 series of transactions to a single buyer or a group of related buyers (excluding transactions with
26 "insiders," if any, as defined in section 101 of the Bankruptcy Code) with a selling price greater
27 than \$20,000 but less than \$50,000 (a "Level 2 Sale")²:

28 (a) The Debtor, subject to its obligations set forth in paragraph 8 herein,
shall be authorized to consummate a Level 2 Sale, if the Debtor determines in the reasonable
exercise of its business judgment that such a Sale is in the best interest of the Debtor's estate.

(b) All Level 2 Sales shall be free and clear of all Liens, with such Liens
attaching to the net Sale proceeds in the same validity, extent and priority as immediately prior to

¹ Capitalized terms used herein and not otherwise defined shall have the same meanings as in the Motion.

² The Debtor will file a separate motion for approval of any Sale in excess of \$50,000.

1 the transaction.

2 (c) The Debtor shall serve written notice (the "Level 2 Sale Notice") of
3 a Level 2 Sale to: (1) any known affected creditor asserting a Lien on the Personal Property
4 proposed to be disposed of by the Debtor, (2) the UST, and (3) counsel to the Committee
5 (collectively, the "Sale Notice Parties) via facsimile, electronic mail, or overnight delivery three
6 (3) business days prior to the closing of such Sale, and shall file a copy of such notice with this
7 Court at least three (3) business days prior to closing such Sale.

8 (d) The Level 2 Sale Notice shall contain: (1) a general description of
9 the Personal Property to be sold, (2) the proposed purchase price, (3) the identity of the potential
10 purchasers(s) and any material connections, if any, such purchaser(s) has/have to the Debtor or
11 "insiders" of the Debtors as insider is defined in Bankruptcy Code section 101(31), (4) the
12 estimated or net book value of the Personal Property to be sold, if available, and (5) the marketing
13 efforts undertaken with respect to the Sale of the Personal Property, including information on any
14 other offers received. If no written objection by the Sale Notice Parties is received by the Debtor
15 and filed with the Court within the three (3) business day period, the Debtor shall be authorized to
16 immediately consummate the Sale without further Court order. If a written objection is received
17 by Debtor's counsel from a Sale Notice Party within such three (3) business day period that cannot
18 be resolved, the Debtor, if it elects to proceed with the Sale, shall schedule a hearing on the dispute
19 of the proposed Sale by telephonically requesting a hearing date from the Court, providing written
20 notice of the scheduled hearing via facsimile, email or overnight delivery to the Sale Notice
21 Parties, and filing, and serving on the Sale Notice Parties, at least one (1) business day in advance
22 of the hearing a Statement explaining the objections to the Sale and the Debtor's reply to such
23 objections. The relevant Sale shall only be implemented upon further order of the Court.

24 (iii) Upon the reasonable request of the UST and/or the Committee, after the
25 implementation of any Sales, the Debtor shall provide additional information to said party(ies) as
26 to the amounts collected from such Sales and other pertinent information related thereto.

27 5. This Order shall not apply to any sales to "insiders," as defined in section 101 of the
28 Bankruptcy Code, and any proposed sale(s) to insiders shall be subject to further Court approval.

1 6. This Order shall not apply to the sale of any Intangible Personal Property. No
2 purchaser involved in a Sale ("Purchaser") is authorized to receive or use any Intangible Personal
3 Property.

4 7. Any Intangible Personal Property conveyed to any Purchaser shall be deemed
5 inadvertent, and any and all privileges that attach to such Intangible Personal Property are hereby
6 preserved and shall remain in full force and effect.

7 8. To the extent that any Purchaser receives Intangible Personal Property, such
8 Purchaser shall promptly notify the Debtor and counsel to the Committee of its receipt of Intangible

1 Personal Property and either return such Intangible Personal Property to the Debtor or destroy it and
2 certify the destruction of such Intangible Personal Property by filing a declaration under the penalty
3 of perjury with the Court. The Debtor is hereby obligated to inform all Purchasers of their duty to
4 comply with this Order.

5 9. Notwithstanding the notice requirements of Bankruptcy Rule 6007(a) or any other
6 applicable statute or rule, the Debtor is authorized, in its reasonable business judgment, pursuant to
7 section 554(a) of the Bankruptcy Code, to abandon Personal Property in accordance with the
8 following Procedures:

9 (i) The Debtor shall serve written notice (the "Abandonment Notice") on
10 (1) any known affected creditor asserting a Lien on the Personal Property proposed to be
11 abandoned by the Debtor, (2) the UST, (3) counsel to the Committee, and (4) in the event that any
12 of the Personal Property being abandoned is located on or in a leased premises, the landlord or
13 sublandlord under the applicable lease/sublease of the Debtor (collectively, the "Abandonment
14 Notice Parties") via facsimile, electronic mail, or overnight delivery three (3) business days prior
15 to abandonment, and to file a copy of such notice with this Court at least three (3) business days
16 prior to abandoning such Personal Property.

17 (ii) If no written objection from any of the Abandonment Notice Parties is
18 received by the Debtor's counsel and filed with the Court within such three (3) business day
19 period, the Debtor may immediately abandon such Personal Property without further Court order.
20 If a written objection is received from an Abandonment Notice Party within such three (3)
21 business day period that cannot be resolved, the Debtor, if it elects to proceed with the
22 abandonment, shall schedule a hearing on the dispute of the proposed abandonment by
23 telephonically requesting a hearing date from the Court, providing written notice of the scheduled
24 hearing via facsimile, email or overnight delivery to the Abandonment Notice Parties, and filing,
25 and serving on the Abandonment Notice Parties, at least one (1) business day in advance of the
26 hearing a Statement explaining the objections to the proposed abandonment and the Debtor's reply
27 to such objections. The relevant abandonment shall only be implemented upon further order of the
28 Court.

29 10. To the extent that any Personal Property proposed to be abandoned by the Debtor in
30 accordance with this Order is located and left at the Debtor's leased/subleased locations, said
31 Personal Property will be deemed abandoned by the estate to the applicable landlord/sublandlord and
32 not the Debtor.

33 11. Prior to the Sale or Abandonment of any Personal Property, the Debtor is required to

34 ~~(i) either remove all electronic information/data contained therein (including that contained in the~~
35 ~~Debtor's computer "hard-drives" at the leased/subleased locations) or retain a copy of such~~

by wiping such "hard-
drives" clean

1 ~~electronic information/data~~, and (ii) provide to the Committee written certifications from the
2 Debtor's agents, substantially in the form attached hereto as Exhibit A, evidencing the chain of
3 custody ~~related to said~~ ^{of any} electronic information/data *that is retained by Debtor.*

4 12. The Debtor and its employees, counsel and agents are authorized to take any and all
5 reasonable and necessary actions to implement any of the foregoing and the transactions
6 contemplated hereunder, including, without limitation, using, employing and paying (i) current
7 and/or former employees of the Debtor ("Employee Agents") and/or (ii) a liquidator firm(s) or
8 company(ies) specializing in asset liquidation and related services ("Liquidator Firm") to review the
9 Personal Property at the Locations, facilitate and implement Sales in accordance with the
10 Procedures, arrange for storage and shipping, and perform related services, as appropriate; provided
11 however, that prior to retaining or compensating any Liquidator Firm (and not any Employee
12 Agents), the Debtor shall be required to provide notice to Committee counsel and obtain approval
13 from the Committee, except that in the event that the Debtor elects in its sole discretion to file an
14 employment application or motion relating to the Liquidator Firm, no such consent from the
15 Committee shall be required. In the event that the Committee does not consent to the retention or
16 compensation of any Liquidator Firm (if such consent is required pursuant to the foregoing), the
17 Debtor, if it elects to proceed with the retention or compensation of such Liquidating Agent, shall
18 schedule a hearing on the dispute of the proposed retention or compensation, as applicable, for
19 hearing by telephonically requesting a hearing date from the Court, providing written notice of the
20 scheduled hearing via facsimile, email or overnight delivery to the Committee, and filing, and
21 serving on the Committee, at least one (1) business day in advance of the hearing a Statement
22 explaining the objections to the proposed retention or compensation of such Liquidator Firm (as
23 applicable) and the Debtor's reply to such objections. Such retention or compensation of such
24 Liquidator Firm shall only be implemented upon further order of the Court.

25 13. Nothing contained in the Motion or this Order is intended to or shall affect the terms
26 of the Agreement of Surrender of Leased Premises among Genuine Home Loans, Inc. (f/k/a/ security
27 Pacific Home Loans, Inc.), the Kalajian Family Trust, and Ownit Mortgage Solutions, Inc. (the
28 "Surrender Agreement") dated December 14, 2006 nor shall this Order be deemed an assumption or

1 rejection of the Surrender Agreement. Each party to the Surrender Agreement retains all of its rights
2 and remedies arising from or related to the Surrender Agreement.

3 14. Notwithstanding anything herein to the contrary, solely with respect to the Objecting
4 Landlords (as defined below), the hearing on the Motion, solely to the extent dealing with the
5 conduct of Sales at the locations leased/subleased by the Debtor from the Objecting Landlords (the
6 "Applicable Sites"), shall be adjourned to January 26, 2007 at 10:00 a.m. (the "Adjourned
7 Hearing"). To avoid any confusion regarding the foregoing, absent the prior consent of the
8 applicable Objecting Landlords, the Debtor will not conduct any Sales at the Applicable Sites,
9 pending the Court's consideration of the Motion at the Adjourned Hearing. The "Objecting
10 Landlords" are: (1) SM Brell II, L.P. (Denver location); (2) Academy Office Investors, LP and RSZ
11 Academy, LLC (N. Hollywood location); (3) CB Richard Ellis, Inc. (San Diego location); (4) WA-
12 Bellevue Gateway, LLC (Seattle location); (5) CA-Douglas Corporate Ctr. Ltd. Partnership
13 (Sacramento location); (6) CA-Inwood Park Ltd. Partnership (Irvine location); (7) OR-Lincoln, LLC
14 (Portland location); and (8) CA-Corporate Centre Ltd. Partnership (Concord location).

15 15. Notwithstanding anything herein to the contrary, the Debtor may not conduct any
16 Sales at its leased/subleased locations in violation of the applicable lease/sublease, without the prior
17 consent of the affected landlords/sublandlords.

18 16. Notwithstanding the possible applicability of Bankruptcy Rule 6004(g), the terms and
19 conditions of this Order shall be immediately effective and enforceable upon its entry.

20 17. The Court shall retain jurisdiction with respect to any matters, claims, rights or
21 disputes arising from or related to the implementation of this Order.

22 DATED:

23 JAN 18 2007

24 
25 The Honorable Kathleen Thompson
26 United States Bankruptcy Judge
27
28



EXHIBIT A

I, _____, declare as follows:

I am a(n) [employee of Ownit Mortgage Solutions, Inc.] [employee of [name of liquidator firm]]. I have personal knowledge of the facts related herein, and if called to testify thereto, could and would competently do so. In the foregoing capacity, on January ____, 2007, I removed all hard drives and all other computer equipment, hardware and software containing electronic information/data of the Debtor located at [leased/subleased site] and delivered said items to _____ at Ownit's Agoura Hills headquarters facility.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this ____ day of January 2007, at _____, California.

EXHIBIT A

PACHULSKI STANG ZIEHL YOUNG JONES & WEINTRAUB LLP
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

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