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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE
COMMISSION,

vs.

PRESTO TELECOMMUNICATIONS, INC.,
AND ALFRED LOUIS VASSALLO, JR. aka
BOBBY VASSALLO,

Defendants.

Plaintiff,

CASE NO. 04cv163-IEG(WMc)

Order Granting Receiver’s Motion for
Sale of Property [Doc. No. 843] ;
Denying Without Prejudice Cynthia
Vassallo’s Motion for Determination
of Separate Property Rights [Doc.
No. 848]

The Receiver moves the Court for an order allowing him to sell the Vassallo’s residence at 1329 West Muirlands Drive, La Jolla to James E. Brakke and Glenys E. Brakke, Trustees of the Brakke Living Trust, and Robert L. Wells, Trustee of the Robert L. Wells Living Trust (collectively “Buyer”). In response, Cynthia Vassallo moves the Court for determination of her separate property rights for purposes of distribution of sale proceeds. The Receiver has filed a response to Mrs. Vassallo’s motion. No other written objections to the sale were filed.

A hearing was held before Chief Judge Irma E. Gonzalez on February 6, 2007. Loraine Pedowitz appeared on behalf of the Receiver. Steven Casselberry appeared on behalf of the proposed Buyer. Rodney Donohoo appeared on behalf of A.L. Vassallo, who was also present along with Cynthia Vassallo.

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Background

On March 2, 2004, the Court entered a preliminary injunction order (“PIO”) appointing Thomas F. Lennon as permanent receiver for Presto Telecommunications, Inc. (“Presto”). The PIO also required A.L. “Bobby” Vassallo to pay the administrative expenses of the receivership estate.

On October 19, 2004, the Court authorized the Receiver to sell Bobby Vassallo’s home on Muirlands Drive to satisfy an outstanding contempt fine. On November 16, 2004, the Court denied Vassallo’s motion for reconsideration of the October 19, 2004 order authorizing sale of the property. In the order denying reconsideration, the Court explicitly reserved until the time of sale the question of what separate property interest, if any, Cynthia Vassallo retains in the Muirlands Drive property.

On May 25, 2005, the Court granted in part the Commission’s motion for summary judgment against Bobby Vassallo and confirmed the Receiver’s authority to sell the Muirlands Drive property. By separate order filed the same date, the Court authorized the Receiver to enter into a purchase agreement for the sale of the property and set forth the procedure to be followed for that sale. On August 15, 2005, the Court summarily adjudicated the amount of disgorgement damages and civil penalties against Bobby Vassallo.

On August 24, 2005, the Court entered final judgment against Bobby Vassallo¹. The judgment required Bobby Vassallo to pay the Receiver \$601,784.77 for fees and expenses. The Court also ordered Bobby Vassallo to disgorge \$1,263,658.79 plus interest, and pay a penalty of \$120,000 to the Receiver. Vassallo filed a notice of appeal of the Court’s final judgment, which remains pending. [Ninth Circuit Court of Appeals, Case No. 05-56449.]

On November 10, 2005, Cynthia Vassallo filed a motion to intervene attempting to assert a property interest in the Muirlands Drive property on behalf of herself and the Vassallo Family Trust. On January 6, 2006, the Court denied Cynthia Vassallo’s motion to intervene finding she failed to satisfy the requirements of Fed. R. Civ. P. 24(a)(2). On March 13, 2006, Cynthia Vassallo appealed the Court’s denial of her request to intervene. [Ninth Circuit Court of Appeals,

¹The Court also separately entered judgment against Presto.

1 Case No. 06-55398.] On May 10, 2006, Cynthia Vassallo voluntarily dismissed the appeal.

2 On September 15, 2006, the Receiver moved the Court for an order authorizing sale of the
3 Muirlands Drive Property. However, the Receiver withdrew the motion because the sale fell
4 through. On December 21, 2006, the Receiver filed the current motion for sale of the Muirlands
5 Drive property. According to the moving papers, the sale of the property will be for \$3.6 million.
6 The aggregate total of the liens on the property exceeds \$3.7 million, but the Receiver disputes
7 certain liens or portions thereof. The sale was subject to overbid, but no overbids were made.

8 The sale of the property is to be free and clear of liens, claims, and interests, with any
9 uncontested secured liens, claims, or encumbrances to be paid through escrow. Contested liens
10 and interests will attach to the sale proceeds and be segregated by the Receiver pending further
11 Court order.

12 On January 31, 2007, Cynthia Vassallo filed a motion for determination of separate
13 property rights. In that motion, Mrs. Vassallo asserts the Muirlands Drive property was initially
14 held by her and Bobby Vassallo as joint tenants, but was transferred on December 13, 2002 to the
15 Vassallo Family Trust, of which she is a Trustee. Mrs. Vassallo seeks a declaration that the
16 Muirlands Drive property is owned by the Trust and, even if the Trust is pierced or otherwise
17 invalidated, she would own a 50% separate interest in the property.

18 On February 5, 2007, the Receiver filed a response to Mrs. Vassallo's motion. The
19 Receiver argues the Court may order the Muirlands Drive property be sold at this time because
20 (1) Mrs. Vassallo's motion for determination of separate property interests is untimely, (2) any
21 interest Mrs. Vassallo has in the proceeds of the sale will attach to the remaining proceeds from
22 the sale, (3) despite arguing she is the Trustee, Mrs. Vassallo and Bobby Vassallo have repeatedly
23 throughout these proceedings represented they hold the property as joint tenants, (4) even if the
24 Trust is the legal owner of the property, it has no economic interest in the property because the
25 aggregate estimated balance of the undisputed and disputed liens exceeds any equity in the
26 property, (5) the Vassallos have failed, despite numerous requests by the Receiver, to provide a
27 copy of Trust documents, (6) the Vassallos themselves have ignored the existence of the Trust by
28 executing a promissory note and a deed of trust to their lawyers, Garrison & McInnis, on July 7,

1 2003, and (7) the Commission has previously identified over \$402,000 in Presto investor funds
2 that were used in the purchase or maintenance of the property. Based thereon, the Receiver argues
3 the Court should authorize the Receiver to go forward with the sale of the Muirlands Drive
4 property at this time.

5 Discussion

6 The Court has previously authorized the Receiver to sell the Muirlands Drive property
7 notwithstanding any separate property interest Cynthia Vassallo may have in the property. In the
8 October 19, 2004 order authorizing the Receiver to sell the home, the Court found Cynthia
9 Vassallo appeared to have a separate property interest in the Muirlands Drive property, but such
10 interest did not bar sale of the property. Relying upon Bankruptcy Code § 363(h), the Court found
11 any harm resulting from the sale, notwithstanding Cynthia Vassallo's potential separate interest,
12 was outweighed by the benefit to be received from selling the home at that time. [Doc. No. 664, p.
13 9.]

14 The Vassallos first asserted the Trust's potential interest in the property in its November
15 2004 motion for reconsideration of the Court's order authorizing the Receiver to sell the property.
16 The November 16, 2004 order denying the motion for reconsideration stated only that the transfer
17 of title in 2002 appeared to put in dispute "Cynthia Vassallo's property interest in the residential
18 property" and reserved until the time of sale any adjudication of Cynthia Vassallo's separate
19 property interest. [Doc. No. 675, p. 7.] Cynthia Vassallo also raised the issue of the property being
20 held in trust in her November 10, 2005 motion to intervene. At that time, the Court found Cynthia
21 Vassallo did not satisfy the requirements of Fed. R. Civ. P. 24(a)(2) allowing her to intervene as a
22 matter of right, noting Mrs. Vassallo had submitted no evidence regarding the existence or terms
23 of the Trust.

24 The Court first authorized the Receiver to sell the house in October 2004, and has entered
25 several orders since that time confirming the Receiver's authority to proceed with a sale. In the
26 face of these orders, Mrs. Vassallo continues to make unsupported contentions regarding the
27 existence of the Vassallo Family Trust and the Trust's ownership interest in the Muirlands Drive
28 property. Mrs. Vassallo has submitted no evidence regarding the existence or terms of the Trust.

1 At the time of the hearing, counsel for Mr. Vassallo asserted Mrs. Vassallo retains an interest in
2 the Muirlands Drive property as a beneficiary of the Trust. This assertion is directly contrary to
3 the papers filed by Mrs. Vassallo, in which she contends she is one of two Trustees of the Trust
4 and the beneficiaries are her three children.

5 By contrast, there is ample evidence to support the Court's prior determination that the
6 Muirlands Drive property is part of the Receivership estate and the Receiver is authorized to sell
7 the property. In the August 15, 2005 order setting the amount of disgorgement damages, the Court
8 found in excess of \$1.2 million in investor funds were directly deposited into personal bank
9 accounts belonging to Vassallo and his wife, or transferred from Presto accounts directly to the
10 Vassallos or to third parties on behalf of the Vassallos. [Doc. No. 796, p. 8.] In addition, the SEC
11 submitted uncontroverted evidence demonstrating over \$402,000 in Presto investor funds were
12 directly used to purchase or maintain the Muirlands Drive property. [Declaration of Carol Der
13 Garry filed in Support of Motion for Temporary Restraining Order, Doc. No. 6, ¶ 20, Exhibits 11
14 and 12.] The Vassallos have not treated the property as if it is held in Trust and instead have
15 granted their attorneys a lien on the property. Finally, the Vassallos have asserted throughout this
16 litigation Mrs. Vassallo has a separate property interest in the property as a joint tenant. This
17 assertion is inconsistent with Mrs. Vassallo's purported role as Trustee of a Trust.

18 The papers submitted by the Receiver establish the proposed sale is for a fair market value.
19 In addition, although the Buyers have a relationship with the property, as lenders of some of the
20 money used by the Vassallos to purchase the property and as Presto investors, they have offered to
21 buy the property for the same price and on the same conditions as the prior proposed Buyer. The
22 Receiver acknowledges the sale price is at the low end of the range of prices in the La Jolla area,
23 but points out the market has slowed significantly over the past 6 months. Therefore, the sale is in
24 "good faith" within the meaning of 11 U.S.C. § 363(m). In re Abbotts Dairies, 788 F.2d 143, 147
25 (3d Cir. 1986).

26 ***Findings and Conclusions***

27 For the foregoing reasons, the Court finds as follows:

- 28 1. the property at 1329 West Muirlands Drive is part of the Receivership estate,

