

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BR 1-4-06

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff - Appellee,

V.

PRESTO TELECOMMUNICATIONS,  
INC.,

Defendant,

And

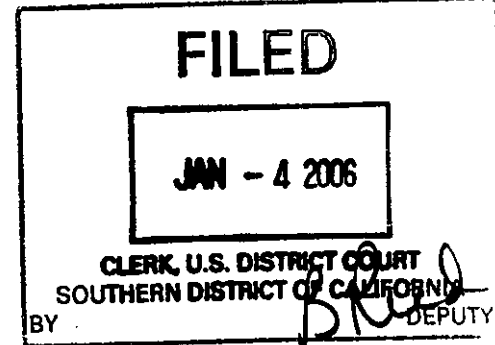
ALFRED LOUIS VASSALLO, JR., aka  
Bobby Vassallo,

Defendant - Appellant.

No. 04-55698

D.C. No. CV-04-00163-IEG/WM

JUDGMENT



SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff - Appellee,

V.

PRESTO TELECOMMUNICATIONS,  
INC.,

Defendant,

And

ALFRED LOUIS VASSALLO, JR., aka

No. 05-55940

D.C. No. CV-04-00163-IEG/WM

JUDGMENT

832

ENTERED ON 1/5/06

Bobby Vassallo,

Defendant - Appellant,

THOMAS F LENON, for Presto  
Telecommunication,

Receiver - Appellee.

Appeal from the United States District Court for the Southern District of  
California (San Diego).

This cause came on to be heard on the Transcript of the Record from the  
United States District Court for the Southern District of California (San Diego)  
and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this  
Court, that the judgment of the said District Court in this cause be, and hereby is  
**DISMISSED IN PART and AFFIRMED IN PART No. 04-55698;**  
**DISMISSED No. 05-55940.**

Filed and entered 11/02/05

A TRUE COPY  
CATHY A. CATTERSON  
Clerk of Court  
ATTEST

DEC 28 2005

by: Ruben Talavera  
Deputy Clerk

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

NOV 02 2005

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff - Appellee,

v.

PRESTO TELECOMMUNICATIONS,  
INC.,

Defendant,

and

ALFRED LOUIS VASSALLO, JR., aka  
Bobby Vassallo,

Defendant - Appellant.

No. 04-55698

D.C. No. CV-04-00163-IEG/WM

MEMORANDUM\*

---

\*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff - Appellee,

v.

PRESTO TELECOMMUNICATIONS,  
INC.,

Defendant,

and

ALFRED LOUIS VASSALLO, JR., aka  
Bobby Vassallo,

Defendant - Appellant,

---

THOMAS F. LENON, for Presto  
Telecommunication,

Receiver - Appellee.

No. 05-55940

D.C. No. CV-04-00163-IEG/WM

Appeal from the United States District Court  
for the Southern District of California  
Irma E. Gonzalez, District Judge, Presiding

Argued and Submitted August 4, 2005  
Pasadena, California

Before: CANBY, KOZINSKI, and RAWLINSON, Circuit Judges.

Alfred Louis Vassallo, Jr. appeals the district court's preliminary injunction  
and order appointing a receiver in a civil enforcement action brought by the

Securities and Exchange Commission (“SEC”) against Vassallo and his company, Presto Telecommunications, Inc. (“Presto”), for alleged violations of federal securities law. Vassallo also appeals the district court’s order of May 24, 2005, which confirms the receiver’s authority to sell Vassallo’s family residence in order to pay the fees, costs, and expenses of the receiver. We affirm in part and dismiss in part.

Because the district court issued a permanent injunction in its final judgment, the preliminary injunction has merged into the final decree. *See In re Estate of Ferdinand Marcos Human Rights Litigation*, 94 F.3d 539, 544 (9th Cir. 1996). Accordingly, we dismiss the appeal of the preliminary injunction as moot. *See id.*

The district court did not abuse its discretion<sup>1</sup> by invoking its inherent equitable power to appoint a receiver and freeze Vassallo’s assets as a form of ancillary relief. *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005); *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). This action reasonably was deemed necessary to prevent further dissipation of Presto’s assets and to protect the interests of its investors. Because Vassallo did not object in

---

<sup>1</sup>We review for abuse of discretion the district court’s decision to appoint a receiver. *See SEC v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986).

timely fashion to the district court's March 1, 2004 order holding him personally liable for the receiver's fees, costs, and expenses, we do not reach Vassallo's argument that the district court erred in holding him personally liable for such costs. *See Telco Leasing, Inc. v. Transwestern Title Co.*, 630 F.2d 691, 693 (9th Cir. 1980).

We dismiss the interlocutory appeal of the order approving the sale of Vassallo's residence because we generally have jurisdiction to review only final judgments. 28 U.S.C. § 1291. Because the order appealed from approves only sale procedures for, rather than the actual sale of, the Vassallo residence, the order is not a final judgment. Section 1292(a)(2) provides an exception to the final judgment rule for appeals from "[i]nterlocutory orders appointing receivers, or refusing orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property." *Id.* § 1292(a)(2). As the district court did not "refus[e] . . . to take steps to accomplish the purposes [of the receivership]," *id.*, its order approving the sale procedures for the Vassallo residence is not appealable, *see SEC v. Am. Principals Holdings, Inc.*, 817 F.2d 1349, 1350-51 (9th Cir. 1987) ("The circuits have held that orders requiring that funds be turned over to a receiver are nonappealable."). Accordingly, we dismiss this appeal.

No. 04-55698 DISMISSED IN PART and AFFIRMED IN PART; No.

05-55940 DISMISSED.

A TRUE COPY  
CATHY A. CATTERSON  
Clerk of Court  
ATTEST  
DEC 28 2005  
by: Ruben Talavera  
Deputy Clerk

INTERNAL USE ONLY: Proceedings include all events.  
04-55698 SEC v. Vassallo, et al

SECURITIES AND EXCHANGE  
COMMISSION  
Plaintiff - Appellee

David Stuart Brown, Esq.  
FAX 323/965-3908  
323/965-3998  
11th Floor  
[COR LD NTC gov]  
SECURITIES AND EXCHANGE  
COMMISSION  
5670 Wilshire Boulevard  
Los Angeles, CA 90036-3648

Susan K. Straus, Esq.  
FAX 202  
202-942-0953  
Mail Stop 0606  
[COR LD NTC gov]  
Christopher Paik, Esq.  
FAX 202/942-2202  
202/942-0926  
Mail Stop 6-6  
[COR LD NTC gov]  
SEC - SECURITIES & EXCHANGE  
COMMISSION  
450 Fifth St., NW  
Washington, DC 20549-0606

v.

PRESTO TELECOMMUNICATIONS,  
INC.  
Defendant

Donald E. McInnis, Esq.  
619/299-4877  
Suite 108  
GARRISON & MCINNIS  
2650 Camino Del Rio North  
San Diego, CA 92108

ALFRED LOUIS VASSALLO, JR.,  
aka Bobby Vassallo  
Defendant - Appellant

Alfred Louis Vassallo, Jr.  
858-459-0785  
[LD NTC ret]  
1329 West Muirlands Drive  
La Jolla, CA 92037

Rodney L. Donohoo, Esq.  
FAX 619/295-3209  
619/295-3200  
Ste. 108  
[COR LD NTC ret]  
2650 Camino del Rio N  
San Diego, CA 92108