JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2003-10-28-06 / NOT PRECEDENTIAL**
ID: **SJ030046-FEE**
DATE: **10-28-03**
DISPOSITION: **DENIED**
TAX TYPE: **MOTOR VEHICLE TITLE**
APPEAL: **NO APPEAL TAKEN**

ORDER DENYING MOTION FOR ATTORNEY FEES AND COSTS

NOW on this 24th day of September, 2003, the Motion for Attorney Fees and Costs filed by Respondents in the above styled and numbered cause comes on for consideration. Respondents are represented by TWO ATTORNEYS. The Applicant in these proceedings is ANONYMOUS Bank. Applicant is represented by THE VICE PRESIDENT OF ANONYMOUS Bank. The Motor Vehicle Division of the Tax Commission (hereinafter "Division") is represented by AN Assistant General Counsel, General Counsel's Office of the Tax Commission.

Upon review of the file and records, including the Motion of the Respondents and Brief in Support of the Motion, the Response of the Applicant and Brief in Support of the Response, the Transcript of the Hearing held on April 10, 2003, to consider the Application for Revocation of the Registration and Certificate of Title issued to Respondents and Exhibits admitted into evidence, and the Transcript of the Hearing held on July 14, 2003 and Exhibits received into evidence, the undersigned finds:

1. That the Applicant was listed as the lien holder on the certificate of title no. AAAAAAAAAAAAA issued to A or B on the vehicle in question.

2. That certificate of title no. BBBBBBBBBBBBB was issued to Respondents on the vehicle in question. Ford Motor Credit Company was listed as the lien holder on the title. The "B" title was issued upon surrender of the "A" title, showing assignment of the vehicle to ANON Ford, Inc. from B (co-owner), and reassignment to Respondents from ANON Ford, Inc. Also presented for purposes of the issuance of the "B" title was a lien release from the Applicant.

3. That the Application for Revocation of the Registration and Certificate of Title issued to Respondents on the vehicle in question was brought by the Applicant for purposes of having its lien reinstated on the vehicle.

4. That the Application for Revocation of Registration and Certificate of Title was denied by Tax Commission Order No. 2003-06-10-05 which adopted the Order issued by the undersigned on May 7, 2003.

5. That Respondents filed the current Motion on May 23, 2003, asserting that they are entitled to their costs and attorney fees as a matter of statutory law pursuant to 12 O.S. 2001, § 941(B), or 23 O.S. 2001, § 103, or in the alternative, at common law, in accordance with City National Bank & Trust Company of Oklahoma City v. Owens, 1977 OK 86, 565 P.2d 4 (Okla. 1977).

6. That Applicant filed a Response to the Respondents' Motion, asserting that the Motion should be denied because the Application for Revocation of Respondents' Certificate of Title was not without a reasonable basis or frivolous. In support of the Response, the Applicant argues that it presented substantial evidence in support of its Application for Revocation.

7. That the evidence presented in this cause shows:

a. One of Applicant's loan officers was advised by B that a payoff was to be received on the vehicle in question. The loan officer thereafter signed and dated the lien release for the vehicle.

b. A copy of the lien release was faxed to ANON Ford by someone employed by the Applicant and the lien release was then notarized at ANON Ford as a true copy.

c. The Applicant does not believe the document was properly notarized as a true and exact copy because it was a faxed copy of the lien release. It is Applicant's understanding of the law in Oklahoma that only the actual page 4 (blue copy) of the lien form or a certified copy of the front page of the lien form can constitute a lien release.

d. The Applicant believes the copy of the lien release was faxed to ANON Ford without any fear of it being construed or accepted as a lien release.

(sic) f. The loan is in arrears and unsecured and it was never intended to be so.

g. The Applicant admits that the title of the vehicle is currently traceable to the proper owner.

h. THE Supervisor-Titles (Lien/Corrections), Motor Vehicle Division, testified that in her opinion, the issuance of the "B" title was improper for the reason that a photocopy of the No. 4 was accepted and by policy of the Tax Commission and written instructions to the tag agents, a photocopy is unacceptable. She further testified that the only acceptable documentation is the original No. 4, a duplicate typed No. 4, a certified copy of the No. 1, or a letter release statement.

i. THE SUPERVISOR admits, however, that statute takes precedence over policy and that Section 1110(B)(2) of Title 47 of the Oklahoma Statutes provides in pertinent part, "The Commission shall accept a release of a security interest in any form that identifies the debtor, the secured party, and the vehicle, and contains the signature of the secured party." She further admits that the executed lien release form No. 4 presented with the transfer of title in question contained all information required by statute.

j. The Applicant stipulates to the reasonableness of the amount of the attorney fees as set forth in the Affidavit.

WHEREFORE, premises considered, the undersigned concludes as a matter of law:

1. That jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 12 O.S. 2001, § 941(B).

2. That a state administrative tribunal of any state agency may assess the respondent's costs, witness fees and reasonable attorney fees against the complainant if the tribunal is required by law to act upon complaints and determines that the complaint had no reasonable basis or is frivolous. 12 O.S. 2001, § 941(B).

3. That in any action for damages for personal injury, or in any action for damages to personal rights the court shall determine whether a claim or defense asserted in the action by a non-prevailing party was asserted in bad faith, was not well grounded in fact, or was unwarranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and upon so finding order the non-prevailing party to reimburse the prevailing party an amount not to exceed Ten Thousand Dollars ($10,000.00) for reasonable costs, including attorney fees, incurred with respect to such claim or defense. 12 O.S. 2001, § 103.

4. That an exception to the general principal known as the "American Rule," that each party should bear costs of his or her own legal representations; is recognized in Oklahoma and attorney fees may be awarded when an opponent has acted in bad faith, vexatiously, wantonly, or for oppressive reason. City National Bank & Trust Company of Oklahoma City v. Owens, 1977 OK 86, 565 P.2d 4 (Okla. 1977).

5. That the burden of proof to show the requested attorney fees are authorized is upon the moving party. Cory v. City of Norman, 1998 OK CIV APP 7, 757 P.2d 851 (Okla.App. 1998).

6. That the "without reasonable basis" test "assumes that the proponent has a valid legal theory but can offer little or nothing in the way of evidence to support the claim". State of Oklahoma, ex rel., Oklahoma Department of Public Safety v. Five Thousand Eight Hundred Nine Dollars ($5,809.00) in United States Currency, 1991 OK CIV APP 82, 817 P.2d 750 (Okla.App. 1991), citing Board of County Commissioners of the County of Jefferson v. Auslaender, 745 P.2d 999 (Colo. 1987). A claim is frivolous "if the proponent can present no rational argument based on the evidence or law in support of that claim". Id.

7. That here, the undersigned finds the Applicant presented evidence in support of its request for revocation of Respondent's title to the vehicle in question for purposes of reinstating its lien and a rational argument based on the evidence. Further, the undersigned finds that the Applicant's request was not "asserted in bad faith or not well grounded in fact" and was not brought "in bad faith, vexatiously, wantonly, or for oppressive reason".

8. That Respondent's Motion for Attorney fees and Costs should be and the same is hereby denied.

THEREFORE, IT IS DETERMINED that the Motion for Attorney fees and Costs of Respondents be denied.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are not generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.