JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2004-07-13-07
ID: SJ-04-010-K
DATE: JULY 13, 2004
DISPOSITION: DENIED
TAX TYPE: TITLE REVOCATION
APPEAL: NONE TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A request for revocation of Title No. REPO TITLE #, a repossession title, issued to the RESPONDENT AUTO DEALER, ("RESPONDENT"), on a 2000 Chrysler, Vehicle Identification No. NUMBER was filed on behalf of the Complainant by, PRESIDENT OF COMPLAINTANT AUTO DEALER ("PRESIDENT") and was received by the Division on March 12, 2004, after PRESIDENT was notified that he could not register and title the vehicle in question due to the issuance of the intervening repossession title to the Respondent. The complaint was forwarded to the Office of the Administrative Law Judges for further proceedings. A *Notice to Show Cause Why the Registration and Certificate of Title Should Not be Revoked* was served on Respondent in accordance with 68 O.S. 2001, § 208.

The Show Cause Hearing was held on April 27, 2004, in accordance with 47 O.S. 2001, § 1106. MANAGER, Used Car Manager of Respondent, was called to testify on behalf of Respondent. PRESIDENT testified on behalf of Complainant. SUPERVISOR, Supervisor of Titles (Lien/Corrections) for the Division, testified regarding the records of the Division. Respondent's Exhibits A through D, and State's Exhibits 1 through 6 were identified, offered and admitted into evidence.

FINDINGS OF FACT

Upon review of the file and records, including the record of the hearing and the exhibits received into evidence, the undersigned finds:

1. That on or about January 31, 2003, Respondent, a Wichita Falls, Texas dealership, sold the vehicle in question to BUYER on credit.[1]

2. That the Retail Installment Sale Contract was "dealer endorsed", the Respondent was a co-signor on the note and the Respondent assigned its interest in the contract, with recourse, to XYZ BANK.[2]

3. That on or about February 13, 2003, Certificate of Title No. ORIGINAL TITLE #, was issued to BUYER, listing XYZ BANK, as lien holder. The type of title was an "original" title issued upon presentment of an application for Oklahoma certificate of title, an assigned certificate of title from the State of Texas, an odometer disclosure statement, a purchase agreement, and a lien entry form.[3]

4. That BUYER made only one payment on the contract and on May 13, 2003, Respondent was required to purchase the installment contract back from XYZ BANK. XYZ BANK transferred and assigned its interest in the contract to the Respondent, without recourse.[4]

5. That approximately two (2) days later or on or about May 15, 2003, Respondent repossessed the vehicle from BUYER.[5]

6. That approximately seven or eight days later, the vehicle was taken from Respondent's lot, allegedly by BUYER, using keys he still possessed.[6]

7. That because Respondent did not have in its possession the title to the vehicle, it could not obtain a lien on the title and because Respondent did not have title to the vehicle, it could not report the vehicle stolen.[7]

8. That numerous unsuccessful attempts were made to locate the vehicle and BUYER, including one incident in mid-November 2003, when BUYER attempted to trade in the vehicle in Oklahoma City.[8]

9. That in mid to late-November, Respondent learned from a Lawton tag agent that they could obtain a "repo" title on the vehicle and they were sent the proper paperwork for making application. That even though the tag agent knew they did not have possession of the vehicle at the time of application, they were told to use May 14, 2003, the date they repossessed the car, as the "Date of Possession" on the Oklahoma Tax Commission Repossession Affidavit.[9]

10. That on or about December 2, 2003, Certificate of Title No. REPO TITLE #, referred to as the "A" title, on the vehicle in question was issued to Respondent. The type of title was a "repo" title issued upon presentment of a repossession affidavit notarized on November 26, 2003, and the required supporting documentation.[10]

11. That Respondent subsequently filed a stolen vehicle report with the Wichita Falls Police Department.[11]

12. That Respondent also filed a lawsuit against BUYER in the District Court, 78th Judicial District of Wichita County, Texas and on March 5, 2004, filed of record March 8, 2004, obtained a Default Judgement against BUYER for the principal amount due under the installment contract, interest on the principal, attorney's fees, court cost and the "right to possession of their vehicle", identified as a 2000 Chrysler Sebring, VIN# NUMBER.[12]

13. That Complainant took the vehicle in question on trade from BUYER on November 25, 2003, at which time Complainant obtained the assigned "original" title, bearing the signature of the seller, and a lien release from XYZ BANK, dated November 17, 2003, and bearing the signature of BANK EMPLOYEE, Assistant Vice President of XYZ BANK.[13]

15. At the time of the transaction, PRESIDENT called the local tag office in Norman, Oklahoma and inquired whether there were any other liens against the vehicle besides the lien appearing on the title and was informed that there were none.[14]

16. That SUPERVISOR met with PRESIDENT in the Division's Offices on March 12, 2004.[15]

17. That although PRESIDENT presented the assigned original title to the vehicle in question, the lien release and stated the vehicle was in his possession, SUPERVISOR declined to register and title the vehicle in Complainant's name because the original title was no longer the valid title to the vehicle due to the issuance of the repossession title to Respondent.[16]

18. That the repossession title was issued based on the required documents and the payment of the appropriate fees, that nothing contained in the documents would have alerted the Division to not issue the repossession title and that as keeper of the motor vehicle title records, the issuance of the repossession title was valid.[17]

19. That in the opinion of SUPERVISOR, an applicant must have possession of the vehicle at the time an application for a "repo" title is made in the State of Oklahoma and that the lien release accepted by Complainant in this matter is faulty since it did not contain the debtor's name.

CONCLUSIONS OF LAW

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. 47 O.S. 2001, § 1106 and 68 O.S. 2001, § 212.

2. That the Oklahoma Vehicle and Registration Act, 47 O.S. 1991, § 1101 ***et seq.***, was not enacted for the purpose of determining the ownership of a vehicle for which a license is to be obtained. ***Lepley v. State of Oklahoma***, 69 Ok. Cr. 379, 103 P.2d 568 (1940).

3. That the revocation of a certificate of title is not a positive determination of ownership of title to the vehicle. ***Id.***

4. That the Tax Commission is merely a custodian of the records required to file and index certificates of title so that "at all times it is possible to trace title to the vehicle designated." 47 O.S. 1991, § 1107.

5. That the Tax Commission upon determination that an Applicant is not entitled to register and title a vehicle may at any time refuse to issue or revoke the registration and certificate of title. 47 O.S. 1991, § 1106.

6. That for the limited purpose of tracing title to the vehicle in question, the evidence presented does not prove the "A" title was erroneously issued. Respondent had the right to possess the vehicle at the time they applied for the repossession title to the vehicle.

DISPOSITION

Therefore, it is ORDERED that the application for revocation of the Registration and Certificate of Title No. REPO TITLE # issued to Respondent, RESPONDENT AUTO DEALER, on the 2000 Chrysler, Vehicle Identification No. NUMBER, 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.

---

[1] Respondent's Exhibit A.

[2] Testimony of MANAGER and Respondent's Exhibit A.

[3] Testimony of SUPERVISOR and State's Exhibit 5.

[4] Testimony of MANAGER and Respondent's Exhibit A.

[5] Testimony of MANAGER.

[6] Testimony of MANAGER.

[7] Testimony of MANAGER.

[8] Testimony of MANAGER.

[9] Testimony of MANAGER and State's Exhibit 1 and 4.

[10] State's Exhibit 4 and Respondent's Exhibit C.

[11] State's Exhibit 4 and Respondent's Exhibit B and C.

[12] Respondent's Exhibit D.

[13] Testimony of PRESIDENT.

[14] Testimony of PRESIDENT.

[15] Testimony of SUPERVISOR.

[16] Testimony of SUPERVISOR

[17] Testimony of SUPERVISOR.