JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2007-09-11-03 / NON-PRECEDENTIAL**
ID: **SJ-07-003**
DATE: **SEPTEMBER 11, 2007**
DISPOSITION: **REVOKED**
TAX TYPE: **TITLE REVOCATION**
APPEAL: **NO APPEAL TAKEN**

ORDER OF SUSTENTATION OF THE REQUEST FOR REVOCATION OF CERTIFICATE OF TITLE

Respondent, RESPONDENT appears pro se. FINANCE COMPANY ("Complainant") is represented by ATTORNEY, Attorney at Law, LAW FIRM. The Motor Vehicle Division of the Tax Commission ("Division") is represented by OTC ATTORNEY, Assistant General Counsel, Office of the General Counsel, Oklahoma Tax Commission.

STATEMENT OF THE CASE

A request for revocation of Oklahoma Certificate of Title No. ###A issued to Respondent on a 1998 Fleetwood manufactured home, Vehicle Identification No. XYZ123, was filed by Complainant on June 29, 2007. On July 6, 2007, the Division's file was referred to the Office of the Administrative Law Judges (ALJ's Office) for further proceedings pursuant to the Oklahoma Vehicle License and Registration Act,[1] and the Rules of Practice and Procedure before the Oklahoma Tax Commission[2]. The request was docketed as Case No. SJ-07-003-K and assigned to ALJ, Administrative Law Judge.[3]

By *Notice to Show Cause Why the Registration and Certificate of Title Should Not be Revoked* issued August 1, 2006, a hearing was scheduled for July 25, 2007. The *Notice* was served on Respondent, Complainant and BUYER, the previous holder of title to the manufactured home in accordance with 47 O.S. Supp. 2004, § 1106(A)(2).

The show cause hearing was held as scheduled. The Division called one witness, ADMINISTRATOR, Administrator-Titles, who testified regarding the title records to the manufactured home. Exhibits A through F were identified, offered and admitted into evidence. Respondent made a statement and Exhibits I through XII were admitted into evidence without objection. Complainant was allowed to examine both ADMINISTRATOR and Respondent. BUYER did not appear. Upon conclusion of the hearing, the record was closed and the case was submitted for decision.[4]

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[1] 47 O.S. 2001, § 1101 et seq.

[2] Rules 710:1-5-20 through 710:1-5-47 of the *Oklahoma Administrative Code* ("*OAC*").

[3] *OAC*, 710:1-5-22(b).

[4] *OAC*, 710:1-5-39(a).

FINDINGS OF FACT

1. On December 1, 1997, BUYER applied for and received an Oklahoma Certificate of Title, an "Original" title, on the subject manufactured home upon presentment of an Application for Oklahoma Certificate of Title for a Vehicle and separate Manufacturer's Statement or Certificate of Origin to a Manufactured Home for the "A-Half" and "B-Half" of the subject manufactured home which reflected a first assignment of the A-half and B-half of the manufactured home to BUYER and a lien in favor of Complainant. Exhibits A and B.

2. On May 22, 2007, Respondent applied for and received Oklahoma Certificate of Title ###A, a "transfer" title, to the subject manufactured home upon presentment of Oklahoma Tax Commission forms 752-A ("Notice of Sale"), 752-B ("Proof of Posting and Mailing"), 752-C ("Return of Sale (Assignment of Ownership)"), 752-D ("Notice of Possessory Lien") and 936 ("Oklahoma Manufactured Home Certificate"). Exhibits C, D and E.

3. Respondent's Title 42 action was instituted on May 9, 2007 and completed on May 22, 2007. Exhibit C.

4. Complainant's lien against the subject manufactured home was extinguished by the Title 42 action. Exhibits D and E.

5. Respondent admits that she did not give notice of the sale to the county treasurer and the county assessor of the county where the subject manufactured home was located.

CONTENTIONS

Complainant contends that Respondent's Oklahoma Certificate of Title on the subject manufactured home should be revoked because Respondent failed to properly follow the procedures for a Title 42 sale. In support of this contention, Complainant argues that Respondent failed to provide notice of the sale to the county treasurer and county assessor of COUNTY, Oklahoma. Complainant further argues that Respondent improperly claimed a lien for storage far in excess of what is permissible under § 91(A)(5) of Title 42 of the Oklahoma Statutes.

Respondent contends that Complainant's request for revocation of her Oklahoma Certificate of Title to the manufactured home should be denied. In Support of this contention, Respondent argues that she relied upon the forms and instructions she received from the employees and agents of the Tax Commission in prosecuting the Title 42 action. She further argues that the possessory lien is a claim for the amount of rent due under the real estate lease rather than storage fees.

The Division takes the position that Respondent's Oklahoma Certificate of Title on the subject manufactured home should be revoked. In support of this position, the Division states that because the sale location involved a rural route address, the Notice of Sale was invalid since it did not give directions to the sale location. The Division further states that the Title 42 packet did not contain a certified mail receipt for the lien debtor, or certified mail receipts for the county assessor and county treasurer. The Division further states that the Notice of Possessory Lien is invalid either

because it was not sent within sixty (60) days of the date of abandonment or it charged storage fees in excess of sixty (60) days prior to the date of the mailing the Notice of Possessory Lien.

CONCLUSIONS OF LAW

1. Jurisdiction over the parties and subject matter of this proceeding is vested in the Tax Commission. 47 O.S. Supp. 2004, § 1106(A)(2).

2. The Oklahoma Vehicle License and Registration Act ("Act")[5] was not enacted for the purpose of determining the ownership of a licensed vehicle, and the issuance or revocation of a certificate of title by the Commission is not a positive determination of ownership of title to the vehicle. ***Lepley v. State of Oklahoma***, 69 Okla.Crim. 379, 103 P.2d 568, 572, 146 A.L.R. 1323 (1940).

3. 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. 2001, § 1107.

4. If at any time, the Tax Commission determines that an applicant for a certificate of title to a vehicle is not entitled thereto, it may refuse to issue such certificate or to register such vehicle and for similar reasons, after ten (10) days' notice and a hearing, it may revoke the registration and the certificate of title already acquired on any outstanding certificate of title. 47 O.S. Supp. 2004, § 1106(A)(1) and (2).

5. The provisions of the Act apply to manufactured homes. 47 O.S. Supp. 2002, § 1117(A).

6. A special lien on personal property, dependent on possession, may be claimed by any person who renders any service to the owner thereof by furnishing storage, rental space, material, labor or skill for the protection, improvement, safekeeping, towing, right to occupy space, storage or carriage thereof, for the compensation, if any, which is due to such person from the owner for such service. 42 O.S. Supp. 2006, § 91(A)(2).

7. The special lien created by the provisions of § 91 and the foreclosure thereof apply to a manufactured home. 42 O.S. Supp. 2006, § 91(A)(1).

8. The special lien created by the provision of § 91 is subordinate to any perfected security interest in the personal property unless the claimant of the lien complies with the requirements of § 91. 42 O.S. Supp. 2006, § 91(A)(3).

9. The special lien may be foreclosed by a sale of such personal property upon a notice of sale. 42 O.S. Supp. 2006, § 91(A)(6). The notice of sale shall be posted in three public places in the county where the property is to be sold at least ten (10) days before the time therein specified for such sale, and a copy of the notice shall be mailed to all interested parties at their last-known post

[5] 47 O.S. 2001, § 1101 et seq.

office address, by regular, first class United States mail and by certified mail on the day of posting. 42 O.S. Supp. 2006, § 91(A)(7). "If the item of personal property is a manufactured home, notice shall also be sent by certified mail to the county treasurer and to the county assessor of the county where the manufactured home is located." Id.

10. The provisions of § 91 as amended by Laws 2006, c. 247, § 1, were in effect at the time Respondent instituted the Title 42 action.

11. Estoppel generally does not apply against the state acting in its sovereign capacity because of unauthorized acts of its officers, ***State ex rel. Cartwright v. Dunbar***, 1980 OK 15, 618 P.2d 900; or because of mistakes or errors of its employees, ***State ex rel. Cartwright v. Tidmore***, 1983 OK 116, 674 P.2d 14; ***State ex rel. Oklahoma Tax Commission v. Emery***, 1982 OK CIV APP 13, 645 P.2d 1048. Application of estoppel is not allowed against state, political subdivisions, or agencies, unless the facts and circumstances implicate the interposition of estoppel would further some prevailing principal of public policy or interest. ***Tice v. Pennington***, 2001 OK CIV APP 95, 30 P.3d 1164; ***Burdick v. Independent School District***, 1985 OK 49, 702 P.2d 48, 26 Ed. Law Rep. 486. Where there is no power to act, a public official cannot bind a government entity even if he or she mistakenly or falsely asserts such authority. ***Hiland Dairy Foods Company, LLC. v. Oklahoma Tax Commission***, 2006 OK CIV APP 68, ¶ 11, 136 P.3d 1072, citing *Indiana Nat'l Bank v. State Dept. of Human Services*, 1993 OK 101, 857 P.2d 53, 64.

12. Because Respondent failed to serve notices of sale on the county treasurer and county assessor of COUNTY in accordance with 42 O.S. Supp. 2006, § 91(A)(7), a mandatory provision[6], the application for revocation of Oklahoma Certificate of Title No. ###A should be and the same is hereby granted.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that Oklahoma Certificate of Title No. ###A issued to Respondent, RESPONDENT, on the 1998 Fleetwood manufactured home, Vehicle Identification No. XYZ123, be revoked.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are 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.

[6] *See*, ***U.S. Through Farmers Home Admin. v. Hobbs***, 1996 OK 77, 921 P.2d 338; ***Application of Proposed 1st City Bank of Healdton***, 1987 OK CIV APP 3, 735 P.2d 350.