JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2008-02-26-02 / NON-PRECEDENTIAL**
ID: **SJ-07-005-K**
DATE: **FEBRUARY 26, 2008**
DISPOSITION: **DENIED**
TAX TYPE: **TITLE REVOCATION**
APPEAL: **NO APPEAL TAKEN**

ORDER

The above matter comes on for entry of a final order of disposition by the Oklahoma Tax Commission. Having reviewed the files and records herein, including the Findings of Fact, Conclusions of Law and Recommendations made and entered by the Administrative Law Judge on the 28th day of November, 2007, the Commission makes the following Findings of Fact and Conclusions of Law and enters the following order.

STATEMENT OF THE CASE

A request for revocation of Title No. 123C, issued to Respondent RESPONDENT on a 2001 Pontiac, Vehicle Identification No. XYZ123, was filed by Complainant FINANCE COMPANY on August 30, 2007. On October 9, 2007, the file of the Motor Vehicle Division of the Oklahoma Tax Commission 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], the Uniform Tax Procedure Code[2] and the Rules of Practice and Procedure before the Oklahoma Tax Commission[3]. The revocation application was docketed as Case No. SJ-07-005-K and assigned to ALJ, Administrative Law Judge.[4]

A *Notice to Show Cause Why the Registration and Certificate of Title Should Not be Revoked* was served on Respondent and Complainant in accordance with 47 O.S. Supp. 2006, § 1106(A)(2). The Show Cause Hearing was held on November 7, 2007. Respondent did not appear at the hearing. Complainant FINANCE COMPANY appeared at the hearing by and through its attorney, ATTORNEY. The Motor Vehicle Division appeared by and through its attorney, OTC ATTORNEY, Assistant General Counsel, Office of the General Counsel, Oklahoma Tax Commission. ADMINISTRATOR, the Division's Administrator of Titles, testified regarding the records and practices of the Division. Exhibits A through C were identified, offered and admitted into evidence. Complainant's Exhibits 1 through 3 were also admitted into evidence.

---

[1] 47 O.S. 2001, § 1102 et seq.

[2] 68 O.S. 2001, § 201 et seq.

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

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

FINDINGS OF FACT

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

1. The "B" title to the vehicle in question was issued to RENTAL COMPANY on or about July 20, 2005. The "B" title was subject to the lien of Complainant. Exhibits A and C, and Complainant's 1 and 2.

2. Respondent applied for and received the "C" title to the vehicle in question on May 31, 2007, upon presentment of a Notice of Possessory Lien[5], a Notice of Sale[6], a Proof of Posting and Mailing[7] and a Return of Sale (Assignment of Ownership)[8]. Exhibits A and Complainant's 2.

3. Respondent's title to the vehicle in question does not reflect the security interest or lien of Complainant. Exhibit B.

4. By letter dated August 30, 2007, Complainant requested that Respondent's title be revoked since the title is not subject to Complainant's lien or security interest. Complainant's 2. In support of this request, Complainant argues that the Title 42 foreclosure proceedings are invalid since SPECIAL LIEN HOLDER failed to comply with the provisions of 47 O.S. Supp. 2003, § 964.

5. The storage lien claimant in this matter did not give the notice to the Department of Public Safety required by Section 964 of Title 47 of the Oklahoma Statutes.

6. It is the Division's position that the Title 42 documents do not reflect any errors or mistakes; therefore, Complainant's request for revocation should be denied.

CONCLUSIONS OF LAW

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

---

[5] The Notice of Possessory Lien executed May 7, 2007, reflects that SPECIAL LIEN HOLDER claimed a special lien against the vehicle in question for storage fees in the amount of $600.00.

[6] The Notice of Sale shows that a public sale was held on May 19, 2007, at ADDRESS, to satisfy the special lien held by SPECIAL LIEN HOLDER on the identified vehicle for storage fees in the amount of $600.00 and that notice of the sale was given to the record owner of the vehicle and Complainant as the lien holder.

[7] The Proof of Posting and Mailing shows that copies of the Notice of Sale were posted at three (3) separate locations within COUNTY (where the property sale was held) and copies of the Notice of Sale were sent by certified mail and 1st class U.S. mail to the record owner of the vehicle and Complainant.

[8] Exhibit C. The Return of Sale (Assignment of Ownership) shows that SPECIAL LIEN HOLDER, lien claimant, in accordance with the Notice of Sale, offered the identified vehicle at public sale on May 19, 2007, and actually sold the vehicle on May 19, 2007 to Respondent for $600.00. The Return of Sale (Assignment of Ownership) was executed by SPECIAL LIEN HOLDER, as seller.

1. Jurisdiction of the parties and subject matter of this proceeding is vested in the Oklahoma Tax Commission. 47 O.S. Supp. 2006, § 1106(A)(2).

2. The Oklahoma Vehicle License and Registration Act ("Act")[9] was not enacted for the purpose of determining the ownership of a licensed vehicle[10], and the issuance or revocation of a certificate of title by the Commission is not a positive determination of ownership of title to a 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 the custodian of the records and is 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 a similar reason, 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 owner of a garage, trailer park or lot shall, within five (5) days after a vehicle has been stored, parked or left in a garage, trailer park, or any type of storage or parking lot for a period of thirty (30) days, report the make, motor and serial number of the vehicle to the Department of Public Safety. 47 O.S. Supp. 2003, § 964. Any person failing to make such report must forfeit all claims for storage of the vehicle and is subject to a fine of up to Twenty-five Dollars ($25.00) per day for each day the report is not made. Id. The provisions of § 964 do not apply where arrangements have been made for the continuous storage or parking by the owner of the motor vehicle so parked or stored, and where the owner of said motor vehicle so parked or stored is personally known to the owner or operator of the garage, trailer park, storage or parking lot. Id. See, ***Volvo***, *supra, n. 10.*

6. The burden of proof in this matter to show that Respondent RESPONDENT is not a bona fide purchaser for value is on the Complainant FINANCE COMPANY. The Complainant has offered no evidence on this issue and fails to meet its burden of proof. For purposes of these proceedings the Respondent should be treated as a bona fide purchaser for value.

7. Although the provisions of Section 964 of Title 47 would be applicable to an initial consideration of issuance of the title which is the subject of these proceedings, a revocation of the title in question would cause the loss in this matter to fall on Respondent, a bona fide purchaser for

---

[9] 47 O.S. 2001, § 1102 et seq.

[10] *But Cf.,* ***Volvo Commercial Finance LLC The Americas v. McClellan***, 2003 OK CIV APP 27, ¶ 27, 69 P.3d 274, which cited with approval ***Mitchell Coach Manufacturing Company, Inc. v. Stephens***, 19 F.Supp.2d 1227, 1233 (N.D.Okla.1998), wherein the Court held that certificates of title under the Act are "proof of ownership" citing 47 O.S. 2001, § 1103. Distinguished by ***In Re Robinson***, 285 B.R. 732, 49 UCC Rep.Serv.2d 327 (W.D.Okla.2002) which cites ***Sutton v. Snider***, 2001 OK CIV APP 117, ¶ 9, 33 P.3d 309, 312, for the proposition that ***Mitchell*** "addresses the issue of perfecting security interests" and "the person who held the paper title in ***Mitchell*** was in essence a bona fide purchaser for value."

value. The Oklahoma Court of Civil Appeals, in *Volvo*, quoted approvingly from *Central National Bank & Trust Co. of Enid v. Community Bank & Trust Co. of Enid*, 1974 OK 141, 528 P.2d 710 which held:

> Where one of two innocent parties must suffer through the act or negligence of a third party, the loss should fall upon the one who by his conduct created the circumstances which enabled the third party to perpetrate the wrong or cause the loss.

Because the Title 42 Notice of Sale was properly sent to complainant in this matter, the complainant could have avoided the loss by taking action on or before the Title 42 sale.

8. Here, no evidence has been presented to show that Respondent is not entitled to the Oklahoma certificate of title issued to her or him on the vehicle in question. Complainant's request for revocation of Certificate of Title No. 123C should be and the same is hereby denied.

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.