JURISDICTION: **OKLAHOMA TAX COMMISSION DECISION**
CITE: **2008-04-15-02 / NON-PRECEDENTIAL**
ID: **SJ-07-006-K**
DATE: **APRIL 15, 2008**
DISPOSITION: **DENIED**
TAX TYPE: **TITLE REVOCATION**
APPEAL: **NO APPEAL TAKEN**

ORDER DENYING THE APPLICATION FOR REVOCATION OF CERTIFICATES OF TITLE

The Motor Vehicle Division of the Tax Commission ("Division") is represented by the OTC ATTORNEY, Assistant General Counsel, Office of the General Counsel, Oklahoma Tax Commission.

STATEMENT OF THE CASE

A request for revocation of the Certificate of Title No. TITLE H issued to RESPONDENT on a 1990 Cadillac, VIN XYZ123, was made by COMPLAINANT. On November 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 ("Act")[1], the Uniform Tax Procedure Code[2] and the Rules of Practice and Procedure before the Oklahoma Tax Commission[3]. The request was docketed as Case No. SJ-07-006-K and assigned to ALJ, Administrative Law Judge.[4]

A hearing was scheduled for November 21, 2007 by *Notice to Show Cause Why the Registration and Certificate of Title Should Not be Revoked* issued November 8, 2007. Upon request of Respondent, RESPONDENT, the hearing was rescheduled for December 18, 2007 by *Notice to Show Cause Why the Registration and Certificate of Title Should Not be Revoked* issued November 21, 2007. The *Notice* was served on RESPONDENT and COMPLAINANT in accordance with 47 O.S. Supp. 2004, § 1106(A)(2).

The hearing was held as scheduled. Counsel's appearance on behalf of the Division and the appearance of SUPERVISOR, Supervisor-Title Section of the Division, as representative of the Division were noted for the record. Complainant, COMPLAINANT appeared at the hearing. Respondent, RESPONDENT did not. Certified copies of Exhibits A through E were identified and admitted into evidence. ALJ's Exhibit 1 and Complainant's Exhibit 1 were also admitted into evidence. Upon conclusion of the hearing, the record was closed and the case was submitted for decision.[5]

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[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).

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

FINDINGS OF FACT

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

1. On October 7, 2004, DEALERSHIP 1 applied for and obtained the "D" title to the vehicle in question[6] upon presentment of a properly completed *Repossession Affidavit*, a *Retail Installment Contract, Security Agreement and Disclosure Statement* between DEALERSHIP 1 and the debtor and *Copy 4: Lien Release – from Secured Party to Debtor* of the *Lien Entry Form*. Exhibit A.

2. On April 11, 2005, Complainant applied for and obtained the "E" title to the vehicle[7], subject to the lien of DEALERSHIP 1, upon presentment of the assigned "D" title and *Copy 6: Debtor Notice to Register Vehicle with Motor License Agent* of the *Lien Entry Form*. Exhibit B.

3. On October 26, 2005, Complainant applied for and obtained the "F" title to the vehicle[8] upon presentment of an *Application for Duplicate Certificate of Title for Vehicle/Boat/Motor.* The "F" title reflected that it was still subject to the lien of DEALERSHIP 1. The stated reason for the duplicate title was "Dealer lost". Exhibit C.

4. On February 9, 2007, DEALERSHIP 2 applied for and obtained the "G" title to the vehicle[9] upon presentment of an *Affidavit for Transfer when Assigned Title is Lost* executed by the owner of Auto Pro, a *Bill of Sale* between Complainant and DEALERSHIP 2 which identifies the vehicle and *Copy 4: Lien Release – from Secured Party to Debtor* of the *Lien Entry Form*. Exhibit D.

5. On March 31, 2007, Respondent applied for and obtained the "H" title to the vehicle[10] upon presentment of the assigned "G" title. Exhibit E.

6. In a letter dated November 27, 2007, Respondent writes the vehicle in question was sold to SCRAPYARD for $100.00 without her knowledge or consent. Complainant's Exhibit 1.

7. The Division records do not reflect any processing errors with respect to the vehicle. Testimony of SUPERVISOR.

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[6] A "repo" title.

[7] A "transfer" title.

[8] A "duplicate" title.

[9] A "transfer" title.

[10] A "transfer" title.

CONCLUSIONS OF LAW

1. Jurisdiction of 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 was not enacted for the purpose of determining the ownership of a licensed vehicle[11], 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 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 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. Here, no evidence has been presented to show a processing error on the part of the Division or a motor license agent with respect to the vehicle. Accordingly, Complainant's application for revocation of Certificate of Title No. TITLE H should be and the same is hereby denied.

DISPOSITION

Based on the above and foregoing findings of fact and conclusions of law, it is ORDERED that the application for revocation of the Certificate of Title No. TITLE H issued to RESPONDENT on a 1990 Cadillac, VIN XYZ123, be denied.

OKLAHOMA TAX COMMISSION

ORDER DENYING MOTION OF COMPLAINANT FOR RECONSIDERATION

The *Motion for Reconsideration* filed by Complainant, COMPLAINANT, in the above styled and numbered cause comes on for consideration. Upon review of the file and records, including the *Motion for Reconsideration* filed January 23, 2008, the *Responses* filed by

[11] *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."

Respondent, RESPONDENT, on January 28, 2008 and the Division on January 31, 2008, the *Reply* filed by Complainant on February 1, 2008, and the *Recommendation of Denial of the Application for Revocation of Certificate of Title* issued in this cause on January 8, 2008, the undersigned finds that Complainant has not alleged the discovery of any new facts or evidence relative to the issue presented nor the lack of consideration of the applicable statutes. The undersigned further finds that the issue has been fully considered and the decision is supported by substantial evidence.

THEREFORE, IT IS ORDERED that the *Motion for Reconsideration* of Complainant, COMPLAINANT, 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.