JURISDICTION:	**OKLAHOMA TAX COMMISSION DECISION**
CITE:	**2009-03-19-02 / NON-PRECEDENTIAL**
ID:	**SJ-09-001-K**
DATE:	**MARCH 19, 2009**
DISPOSITION:	**DENIED**
TAX TYPE:	**TITLE REVOCATION**
APPEAL:	**NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondents, RESPONDENT and/or BUSINESS are represented by ATTORNEY 1, Attorney at Law. Complainants, CARRIAGE CO. and/or COMPLAINANT are represented by ATTORNEY 2, Attorney at Law, LAW FIRM. The Motor Vehicle Division of the Tax Commission (hereinafter "Division") is represented by OTC ATTORNEY 1 and OTC ATTORNEY 2, Assistant General Counsels, Office of the General Counsel, Oklahoma Tax Commission.

STATEMENT OF THE CASE

A revocation hearing request was filed by Complainants on December 17, 2008, seeking the revocation of Oklahoma Certificate of Title Nos. 123C, 456K and 789B issued to Respondent, RESPONDENT on three (3) vehicles: a 1998 Ford 35C, VIN AAA111; a 1994 Lincoln EXC, VIN BBB222; and a 2000 Lincoln EXC, VIN CCC333, respectively and the Oklahoma Certificate of Title No. 789C issued to Respondent, BUSINESS on the 2000 Lincoln EXC, VIN CCC333. On January 5, 2009, the request and the Division's records were 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-09-001-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 Respondents and Complainants in accordance with 47 O.S. Supp. 2006, § 1106(A)(2). The Show Cause Hearing was held on January 20, 2009. Complainants did not appear at the hearing; but on January 23, 2009, submitted their complaint, an affidavit and twelve (12) exhibits which were accepted for filing in this cause. Respondent appeared and gave his statement to the Court. SUPERVISOR, the Division's Supervisor of Titles, testified regarding the records and practices of the Division. Exhibits A-98F through G-98F, A-94L through G-94L, A-2000L through G-2000L, and D were identified, offered and admitted into evidence. Upon conclusion of the hearing, the record was closed and the revocation request 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 recording of the hearing and the exhibits received into evidence, the undersigned finds:

1998 FORD 35C, VEHICLE IDENTIFICATION NO. AAA111

1. On April 20, 2007, an original Oklahoma Certificate of Title to the vehicle in question was issued to Complainant, COMPLAINANT upon presentment of an *Application for Oklahoma Certificate of Title for a Vehicle*, a *State of Tennessee Certificate of Title* reflecting an assignment of the title to Complainant, COMPLAINANT, a *Lien Release* and an *Affidavit for Out-of-State Lien Verification*. Exhibit A-98F.

2. On May 5, 2008, the "A" title to the vehicle, a "Transfer" title was issued to LIMO CO. upon presentment of the "original" Oklahoma Certificate of Title reflecting an assignment of the title to LIMO CO. by Complainant, COMPLAINANT. Exhibit B-98F.

3. On September 17, 2008, the "B" title to the vehicle, a "Duplicate" title was issued to LIMO CO. upon presentment of an *Application for Replacement Certificate of Title for Vehicle/Boat/Motor* executed by Complainant, COMPLAINANT as owner of LIMO CO. Exhibit B-98F.

4. On October 10, 2008, the "C" title to the vehicle, a "Transfer" title was issued to Respondent, RESPONDENT upon presentment of a *Return of Sale (Assignment of ownership)*, a *Notice of Sale*, a *Certified Mail Receipt* and a *Proof of Posting and Mailing*. The *Return of Sale (Assignment of ownership)* reflects that Respondent d/b/a BUSINESS, lien claimant in accordance with the *Notice of Sale*, offered the identified vehicle at public sale on September 30, 2008, and actually sold the vehicle on said date to himself for the amount of the claimed lien against the vehicle. The *Notice of Sale* shows that a public sale was held at 12:00 p.m., on September 30, 2008, at ADDRESS, to satisfy the lien claimed by Respondent on the identified vehicle for repairs, service, storage and/or rental in the amount of $4,548.00. The *Notice* does not report a date of abandonment of the vehicle or identify anyone authorizing service to the vehicle. The detail of services provided shows "management services, storage, maintenance, detailing from February 15, 2008 to August 15, 2008" and reflects storage or possession during said time period at a rate of $22.00 per day. The *Notice* was served on Complainant, COMPLAINANT and LIMO CO. on or about September 12, 2008, at the address shown on the "B" title of TITLE ADDRESS. The *Proof of Posting and Mailing* shows that the *Notice of Sale* was posted at three (3) separate locations in COUNTY and was sent by certified mail to LIMO CO. and Complainant, COMPLAINANT as Record Owner of the identified vehicle. Exhibit C-98F.

1994 LINCOLN EXC, VEHICLE IDENTIFICATION NO. BBB222

1. On August 10, 2004, the "H" title to the vehicle in question, a "Rebuilt/Transfer" title was issued to Complainant, COMPLAINANT. Exhibit A-94L.

2. On May 5, 2008, the "I" title to the vehicle, a "Transfer" title was issued to LIMO CO. upon presentment of the "H" title reflecting an assignment of the title to LIMO CO. by Complainant, COMPLAINANT. Exhibits A-94L and B-94L.

3. On September 17, 2008, the "J" title to the vehicle, a "Duplicate" title was issued to LIMO CO. upon presentment of an *Application for Replacement Certificate of Title for Vehicle/Boat/Motor* executed by Complainant, COMPLAINANT as President of LIMO CO. Exhibit B-94L.

4. On November 3, 2008, the "K" title to the vehicle, a "Transfer" title was issued to Respondent, RESPONDENT upon presentment of a *Return of Sale (Assignment of ownership)*, a *Notice of Sale*, a *Certified Mail Receipt* and a *Proof of Posting and Mailing*. The *Return of Sale (Assignment of ownership)* reflects that Respondent d/b/a BUSINESS, lien claimant in accordance with the *Notice of Sale*, offered the identified vehicle at public sale on September 30, 2008, and actually sold the vehicle on said date to himself for the amount of the claimed lien against the vehicle. The *Notice of Sale* shows that a public sale was held at 12:00 p.m., on September 30, 2008, at ADDRESS, to satisfy the lien claimed by Respondent on the identified vehicle for repairs, service, storage and/or rental in the amount of $4,548.00. The *Notice* does not report a date of abandonment of the vehicle or identify anyone authorizing service to the vehicle. The detail of services provided shows "management services, storage, maintenance, detailing from February 15, 2008 to August 15, 2008" and reflects storage or possession during said time period at a rate of $22.00 per day. The *Notice* was served on Complainant, COMPLAINANT and LIMO CO. on or about September 12, 2008, at the address shown on the "J" title of TITLE ADDRESS. The *Proof of Posting and Mailing* shows that the *Notice of Sale* was posted at three (3) separate locations in COUNTY and was sent by certified mail to Complainant, COMPLAINANT as Record Owner of the identified vehicle. Exhibit C-94L.

2000 LINCOLN EXC, VEHICLE IDENTIFICATION NO. CCC333

1. On December 27, 2006, an original Oklahoma Certificate of Title to the vehicle in question was issued to LIMO CO. upon presentment of an *Application for Oklahoma Certificate of Title for a Vehicle*, a *Declaration of Vehicle Purchase Price*, a *State of California Certificate of Title*, a *State of Texas Dealer's Reassignment of Title for a Motor Vehicle* reflecting an assignment of the title to LIMO CO. Exhibit A-2000L.

2. On September 17, 2008, the "A" title to the vehicle, a "Duplicate" title was issued to LIMO CO. upon presentment of an *Application for Replacement Certificate of Title for Vehicle/Boat/Motor* executed by Complainant, COMPLAINANT as President of LIMO CO. Exhibit A-2000L.

3. On October 10, 2008, the "B" title to the vehicle, a "Transfer" title was issued to Respondent, RESPONDENT upon presentment of a *Return of Sale (Assignment of ownership)*, a *Notice of Sale*, a *Certified Mail Receipt* and a *Proof of Posting and Mailing*. The *Return of Sale (Assignment of ownership)* reflects that Respondent d/b/a BUSINESS, lien claimant in accordance with the *Notice of Sale*, offered the identified vehicle at public sale on September 30, 2008, and actually sold the vehicle on said date to himself for the amount of the claimed lien against the

vehicle. The *Notice of Sale* shows that a public sale was held at 12:00 p.m., on September 30, 2008, at ADDRESS, to satisfy the lien claimed by Respondent on the identified vehicle for repairs, service, storage and/or rental in the amount of $4,548.00. The *Notice* does not report a date of abandonment of the vehicle or identify anyone authorizing service to the vehicle. The detail of services provided shows "management services, storage, maintenance, detailing from February 15, 2008 to August 15, 2008" and reflects storage or possession during said time period at a rate of $22.00 per day. The *Notice* was served on Complainant, COMPLAINANT and LIMO CO. on or about September 12, 2008, at the address shown on the "A" title of TITLE ADDRESS. The *Proof of Posting and Mailing* shows that the *Notice of Sale* was posted at three (3) separate locations in COUNTY and was sent by certified mail to LIMO CO. and Complainant, COMPLAINANT as Record Owner of the identified vehicle. Exhibit B-2000L.

4. On November 3, 2008, the "C" title to the vehicle, a "transfer" title was issued to BUSINESS upon presentment of the "B" Oklahoma Certificate of Title reflecting an assignment of the title to BUSINESS by the Respondent, RESPONDENT. Exhibit C-2000L.

ADDITIONAL FINDINGS

1. None of the Oklahoma Certificates of Title issued to Complainants on the vehicles in question reflect a lien recorded thereon.

2. Complainants seek revocation of the Oklahoma Certificates of Title issued to Respondents on the grounds that the transfers pursuant to Title 42 were fraudulent. Complainants argue that Respondents were not in lawful possession of the vehicles, that the notices of sale do not notice Complainant, CARRIAGE CO., the title owner of the vehicles and that prior to the notices of sale, Complainants never received any receipts for services performed with respect to the vehicles.

3. It is the opinion of the Division that no error was made with respect to the issuance of the Oklahoma Certificates of Title to Respondents.

CONCLUSIONS OF LAW

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

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")[6] was not enacted for the purpose of determining the ownership of a licensed vehicle[7], and the issuance or revocation of a

[6] 47 O.S. 2001, § 1102 et seq.

[7] *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."

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. Because the Oklahoma Certificates of Title issued to Complainants for the vehicles in question did not reflect any active liens recorded thereon, § 91A of Title 42 of the Oklahoma Statutes is applicable. 42 O.S. Supp. 2008, §§ 91(D)(1) and 91A(D)(1).

6. "Any person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof by furnishing storage, rental space, material, labor or skill for the protection, improvement, safekeeping, * * *, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to such person from the owner for such service." 42 O.S. Supp. 2008, § 91A(A)(2). The lien may be foreclosed by a sale upon notice thereof. 42 O.S. Supp. 2008, § 91A(A)(3). The notice is required to 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", mailed to the owner and any other party claiming any interest in the property if known by certified mail on the day of posting, 42 O.S. Supp. 2008, § 91A(A)(4); and contain the following information, to-wit:

> a. the names of the owner and any other known party or parties who may claim any interest in the property,
>
> b. a description of the property to be sold,
>
> c. the nature of the work, labor or service performed, material furnished, or the storage or rental arrangement, and the date thereof,
>
> d. the time and place of sale, and
>
> e. the name of the party, agent or attorney foreclosing such lien. If the claimant is a business, then the name of the contact person must be shown. In place of an original signature and notary seal, a digital or electronic signature or seal shall be accepted.

42 O.S. Supp. 2008, § 91A(A)(3).

7. Here, the documentation accepted by the Division to transfer title to the vehicles to Respondents was in proper form and sufficient.

DISPOSITION

Therefore, it is ORDERED that the application for revocation of Certificates of Title No. 123C, 456K and 789B issued to Respondent, RESPONDENT on the 1998 Ford 35C, VIN AAA111; the 1994 Lincoln EXC, VIN BBB222; and, the 2000 Lincoln EXC, VIN CCC333, respectively; and Certificate of Title No. 789C issued to Respondent, BUSINESS on the 2000 Lincoln EXC, CCC333, be 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.