JURISDICTION: **OKLAHOMA TAX COMMISSION DECISION**
CITE: **2009-03-19-03 / NON-PRECEDENTIAL**
ID: **SJ-09-002-K**
DATE: **MARCH 19, 2009**
DISPOSITION: **REVOKED**
TAX TYPE: **TITLE REVOCATION**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent, RESPONDENT and Complainant, COMPLAINANT appear pro se. The Motor Vehicle Division of the Oklahoma 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 Complainant on or around the third week of December, 2008, with respect to the Oklahoma Certificate of Title No. 123G issued June 26, 2007 to Respondent on a 2001 Lexus IS 300, VIN. XYZ123. The request and the Division's records were referred to the Office of the Administrative Law Judges 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 request was docketed as Case No. SJ-09-002-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 January 22, 2009. Neither Complainant nor Respondent appeared at the hearing or responded to the *Notice*. SUPERVISOR, Supervisor-Titles, testified regarding the title history of the vehicle. Exhibits A through J were identified, offered and admitted into evidence. Upon conclusion of the Division's presentation, the record was closed and the revocation request was submitted for decision.[5]

FINDINGS OF FACT

Upon review of the file and records, including the tape recording of the show cause hearing and the exhibits received into evidence, the undersigned finds:

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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).

1. On September 1, 2006, the "C" title to the vehicle in question, a "Transfer" title was issued to Complainant upon presentment of the "B" Oklahoma Certificate of Title reflecting an assignment of the title to Complainant by the record owner of the vehicle. The "C" title was subject to the lien of BANK[6]. Exhibit D.

2. On November 10, 2006, the "D" title to the vehicle, an "Add Lien" title was issued to Complainant showing a lien against the vehicle in favor of FINANCE CO. Exhibit E.

3. On March 9, 2007, the "E" title to the vehicle, a "Duplicate" title was issued to Complainant upon presentment of an *Application for Duplicate Certificate of Title for Vehicle/Boat/Motor* by Complainant. Exhibit F.

4. On March 23, 2007, the "F" title to the vehicle, an "Add Lien" title was issued to Complainant showing a second lien against the vehicle in favor of FINANCE CO. Exhibit G

5. On June 26, 2007, the "G" title to the vehicle, a "Transfer" title was issued to Respondent upon presentment of an *Affidavit for Transfer when Assigned Title is Lost* and a notarized *Bill of Sale* dated June 20, 2007. Not only is Complainant's first name on the *Affidavit* and *Bill of Sale* misspelled, but the first name appearing in the seller's signature block on the *Bill of Sale* is misspelled. The FINANCE CO. liens are recorded on the "G" title. Exhibit H.

6. SUPERVISOR was unable to testify whether the original notarized *Bill of Sale* had a notary seal since all original transfer documents are microfilmed and destroyed and the impression of the seal is not always picked up by the filming process.

7. On or around the third week of December, 2008, Complainant filed a revocation hearing request with the Division wherein she writes: "the car was stolen from me and [Respondent] falsified my signature. The form used to transfer the title is invalid in my opinion." Testimony of SUPERVISOR and Exhibit I.

8. SUPERVISOR testified regarding her conversation with DETECTIVE of the CITY Police Department and stated he advised her that he had spent quite a bit of time investigating the theft of the vehicle, that the vehicle had been stolen and that it was recently recovered and returned to Complainant. The vehicle had not been reported to the Division as stolen prior to the request for the revocation hearing.

9. Without the original transfer documents, SUPERVISOR is unable to testify whether an error was committed by the tag agent in issuing the "G" title to Respondent. SUPERVISOR is otherwise of the opinion that no error was committed.

CONCLUSIONS OF LAW

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

[6] The BANK lien existed prior to this assignment. See, Exhibits B and C. Although not relevant to these proceedings, the record of title does not reflect how this lien was extinguished. See, Exhibit E.

1. Jurisdiction of the parties and subject matter of this proceeding is vested in the Oklahoma 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[7], and the issuance or revocation of a certificate of title by the Commission is not a positive determination of ownership of 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. A transfer affidavit is used "to transfer a title when the assigned title has been lost and the previous owner cannot get a duplicate title and assign it to the purchaser." *OAC*, 710:60-5-94(a). "The Transfer Affidavit [must be] accompanied by supporting documentation, such as a notarized Bill of Sale, canceled check, Sales Contract or notarized statement of a witness to the transaction." *OAC*, 710:60-5-94(b).

6. If a vehicle is stolen, the owner is required to immediately notify the appropriate law enforcement agency and the law enforcement agency is required to immediately notify the Tax Commission. 47 O.S. 2001, § 1105(K).

7. Here, the evidence shows that the *Bill of Sale* should not have been accepted as a supporting document to the Transfer Affidavit. Accordingly, the "G" title issued to Respondent on the vehicle in question should be revoked.

DISPOSITION

THEREFORE, IT IS ORDERED that the Certificate of Title No. 123G issued to RESPONDENT on the 2001 Lexus, VIN XYZ123 be revoked.

OKLAHOMA TAX COMMISSION

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[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."

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.