

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2009-10-13-02 / NON-PRECEDENTIAL
ID: SJ-09-007-K
DATE: OCTOBER 13, 2009
DISPOSITION: DENIED
TAX TYPE: TITLE REVOCATION
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent, RESPONDENT did not accept notice of these proceedings. Complainant, CAR DEALER is represented by REPRESENTATIVE. The Motor Vehicle Division of the Oklahoma Tax Commission (hereinafter "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 Title No. 123A issued to Respondent on a 2004 Ford Taurus, Vehicle Identification No. XYZ123, was filed by Complainant on or about July 7, 2009. On July 8, 2009, the request and the Division's file were referred to the Office of the Administrative Law Judges (ALJ's Office) for further proceedings pursuant to the Oklahoma Vehicle License and Registration Act¹, the Uniform Tax Procedure Code² and the Rules of Practice and Procedure before the Oklahoma Tax Commission³. The revocation application was docketed as Case No. SJ-09-007-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 August 4, 2009. Respondent did not accept service of the notice and did not appear at the hearing. SUPERVISOR, the Division's Supervisor of Titles, testified regarding the records and policies of the Division. Exhibits A-1 through A-11 and B-1 through B-11 were identified, offered and admitted into evidence. REPRESENTATIVE made a statement and offered argument in support of the request for revocation. Upon conclusion of the hearing, the record was closed and the case was submitted for decision.⁵

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:

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 October 23, 2008, Complainant obtained an Original Oklahoma certificate of title to the vehicle in question upon presentment of an assigned Florida certificate of title. Exhibits B-1 through B-3.

2. On or about October 30, 2008, Complainant sold the vehicle to BUYER. BUYER never titled the vehicle in his name. A lien against the vehicle was entered on October 30, 2008 in favor of FINANCE COMPANY⁶ naming the lien debtor as BUYER. Exhibits A-2 and A-9.

3. On March 14, 2009, the “A” title to the vehicle, a “transfer” title was issued to Respondent upon presentment of a Notice of Sale⁷; Return of Sale (Assignment of Ownership)⁸; Notice of Possessory Lien⁹; Proof of Posting and Mailing¹⁰ and copies of the Certified Mail Receipts showing postmark dates of February 17, 2009. All of the supporting documents to the application for certificate of title were notarized by NOTARY, Notary Public whose commission expired January 30, 2011. Exhibits A-3 through A-8 and A-10.

4. The lien of FINANCE COMPANY against the vehicle in question was released on March 9, 2009 due to the title 42 action. Exhibit A-9.

5. REPRESENTATIVE testified that neither Complainant nor FINANCE COMPANY received notice of the Notice of Possessory Lien or the Notice of Sale. She also testified that she checked the postal service’s tracking system and could not find where the certified mailings were recorded.

6. SUPERVISOR testified that the title 42 paperwork was correctly completed and no error was made in the issuance of title to Respondent.

⁶ Complainant’s financing company.

⁷ The Notice of Sale (“Notice”) shows that a public sale was to be held on at 8:00 a.m., on February 28, 2009, at ADDRESS, to satisfy the lien claimed by LIEN CLAIMANT d/b/a BUSINESS on the identified vehicle for service performed on January 3, 2009. The Notice identifies BUYER as authorizing the service. A total of \$1,500.00 is claimed as the amount owed for the service. The Notice also reports that the vehicle was abandoned on January 3, 2009. The Notice was purportedly served on Complainant as the Record Owner, and BUYER and FINANCE COMPANY as Interested Parties.

⁸ The Return of Sale (Assignment of Ownership) shows that LIEN CLAIMANT d/b/a BUSINESS, lien claimant in accordance with the Notice of Sale, offered the identified vehicle at public sale on February 28, 2009, and actually sold the vehicle on said date to RESPONDENT for \$800.00.

⁹ The Notice of Possessory Lien reports that LIEN CLAIMANT d/b/a BUSINESS claimed a possessory lien against the vehicle for repairs and/or services performed on the vehicle in a total amount of \$1,500.00. The Notice of Possessory Lien shows that service to the vehicle was requested by BUYER and the vehicle was abandoned on February 17, 2009. The Notice of Possessory Lien also shows it was served on Complainant, BUYER and FINANCE COMPANY.

¹⁰ The Proof of Posting and Mailing shows the Notice of Sale was posted at three (3) locations in COUNTY, Oklahoma and was sent by certified mail to Complainant as record owner, and BUYER and FINANCE COMPANY as interested parties on February 17, 2009.

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”)¹¹ was not enacted for the purpose of determining the ownership of a licensed vehicle¹², 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. “Any person who, while lawfully in possession of an article of Section 91 Personal property¹³, 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. 2006, § 91(A)(2). The special lien is subordinate to any perfected security interest unless the claimant complies with the requirements of § 91. 42 O.S. Supp. 2006, § 91(A)(3). Notice of the special lien shall be mailed by regular, first class United States mail, and by certified mail, to all interested parties who reside at separate locations no later than sixty (60) days after the first services are rendered. 42 O.S. Supp. 2006, § 91 (A)(4)¹⁴. Unless agreed to by

¹¹ 47 O.S. 2001, § 1102 et seq.

¹² *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.”

¹³ “Section 91 Personal Property” is defined at 42 O.S. Supp. 2006, § 91(A)(1).

¹⁴ The notice is required to contain, but not be limited to, the following:

- a. a statement that the notice is a notice of a possessory lien,
- b. the complete legal name, physical and mailing address, and telephone number of the claimant,
- c. the complete legal name, physical and mailing address of the person who requested

contract as part of an overall transaction or arrangement that is primarily for the purpose of storage, storage charges or charges for rental of space for services rendered or vehicles abandoned on or after November 1, 2005, may only be assessed beginning with the day that the Notice of Possessory Lien is mailed as evidenced by certified mail. 42 O.S. Supp. 2006, § 91(A)(5). The lien may be foreclosed by a sale of such personal property upon notice of such sale¹⁵, which notice 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 specified for the sale and mailed to all interested parties at their last-known post 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)(6) and (7). Proceedings for foreclosure shall be commenced within thirty (30) days after the Notice of Possessory Lien has been mailed as evidenced by certified mail, and the sale shall be held within sixty (60) days from the date of the Notice of Sale as evidenced by certified mail. 42 O.S. Supp. 2006, § 91(A)(11).

6. Here, the title 42 documentation accepted by the Division to transfer title to the vehicle to Respondent was in proper form and sufficient.

that the claimant render service to the owner by furnishing material, labor or skill, storage, or rental space, or the date the property was abandoned if the claimant did not render any other service,

d. a description of the article of personal property and the complete physical and mailing address of the location of the article of personal property,

e. an itemized statement describing the date or dates the labor or services were performed and material furnished, and the amount of the compensation claimed,

f. a statement by the claimant that the materials, labor or skill furnished, or arrangement for storage or rental of space, was authorized by the owner of the personal property and was in fact provided or performed, or that the property was abandoned by the owner if the claimant did not render any other service, and that storage or rental fees will accrue as allowed by law, and

g. the signature of the claimant which shall be notarized and, if applicable, the signature of the claimant's attorney. 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.

¹⁵ The notice of sale shall contain:

a. a statement that the notice is a Notice of Sale,

b. the names of all interested parties known to the claimant,

c. a description of the property to be sold,

d. a notarized statement of the nature of the work, labor or service performed, material furnished, or storage or rental of space, and the date thereof, and the name of the person who authorized the work, labor or service performed, or the storage or rental arrangement, or that the property was abandoned if the claimant did not render any other service,

e. the date, time and exact physical location of sale, and

f. the name, complete physical address and telephone number of the party 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.

DISPOSITION

Based on the above and foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the application for revocation of Certificate of Title No. 123A issued to Respondent, RESPONDENT, on the 2004 Ford, Vehicle Identification No. XYZ123, 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.