

JURISDICTION: OKLAHOMA TAX COMMISSION
CITE: 2016-04-19-04 / NON-PRECEDENTIAL
ID: SJ-15-009-K
DATE: APRIL 19, 2016
TAX TYPE: TITLE REVOCATION
APPEAL: NONE 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, the Commission hereby adopts the Findings of Fact, Conclusions of Law and Recommendation made and entered by the Administrative Law Judge on the 10th day of March, 2016, appended hereto, together herewith shall constitute the Order of the Commission.

SO ORDERED

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION

NOW on this 10th day of March, 2016, the above styled and numbered cause comes on for decision pursuant to assignment regularly made by the Oklahoma Tax Commission to ALJ, Administrative Law Judge. Respondent, RESPONDENT appears by and through REPRESENTATIVE. Complainant, COMPLAINANT appears by and through PRESIDENT, President and CONTROLLER, Controller. The Motor Vehicle Division of the Oklahoma Tax Commission (hereinafter "Division") is represented by OTC ATTORNEY, Interim General Counsel, Office of the General Counsel, Oklahoma Tax Commission.

STATEMENT OF THE CASE

A request for revocation of Title No. ### issued to Respondent on a 2008 Dodge Magnum, Vehicle Identification No. ###, was filed by Complainant on December 16, 2015. On even date, the request was referred to the Office of Administrative Law Judges to initiate appellate proceedings in accordance with the Oklahoma Vehicle License and Registration Act¹, Uniform Tax Procedure Code² and the Rules of Practice and Procedure before the Office of Administrative Law Judges³. The revocation application was docketed as Case Number SJ-15-009-K and assigned to ALJ, Administrative Law Judge.⁴

¹ 47 O.S. 2011, § 1102 et seq., as amended.

² 68 O.S. 2011, § 201 et seq., as amended.

³ Rules 710:1-5-20 through 710:1-5-49 of the *Oklahoma Administrative Code* ("OAC").

⁴ OAC 710:1-5-22(b).

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. 2011, § 1106(A)(2). The Show Cause Hearing was held on February 16, 2016. SUPERVISOR, the Division's Supervisor of Titles, testified regarding the records and policies of the Division. Division Exhibits 1-1 through 1-5 were identified, offered and admitted into evidence. PRESIDENT made a statement and offered argument in support of the request for revocation. REPRESENTATIVE made a statement and offered argument in opposition to 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, the exhibits received into evidence, and the request for revocation and attached documents, the undersigned finds:

1. On July 3, 2014, Complainant obtained title to the vehicle in question upon presentment of the reassigned title of DEALERSHIP, Bill of Sale dated June 27, 2014 and a Lien Entry Form. Division Exhibit 1-2.
2. Complainant subsequently leased the vehicle to LESSEE. See, Division Exhibit 1-4.
3. The vehicle was subject to the liens of CREDITOR (lien entry date of July 3, 2014, and release date of March 9, 2015); Division Exhibit 1-1, and BANK (lien entry date of March 9, 2015, and release date of September 10, 2015; Division Exhibits 1-2 and 1-3.
4. On April 6, 2015, LESSEE had the vehicle towed by WRECKER COMPANY to Respondent's repair facilities upon the complaints that the vehicle would not crank or start, the key was stuck in the ignition and the driver's side window would neither roll up or down. Division Exhibit 1-4.
5. A Service Write Up Sheet was executed by LESSEE and a Repair Order was opened. *Id.*
6. Respondent ran a trim and electrical system diagnostic on the vehicle and determined that the "win module" needed to be replaced. *Id.*
7. LESSEE declined all repairs on the vehicle except for the factory campaign/ recall notice P57. *Id.*
8. LESSEE was placed in a loaner vehicle with an internal control period of twelve (12) days. *Id.*

⁵ OAC 710:1-5-39(a).

9. On April 20th, 22nd and 23rd, 2015, Respondent attempted to contact LESSEE by phone without success to remind her that rental charges started on the loaner vehicle on April 18, 2015 at \$35.00 a day until either she returned the loaner or approved the needed parts and repairs. *Id.*

10. On June 9, 2015, Respondent closed out the repair order showing charges of rental for the loaner vehicle for 51 days, a sublet charge for the towing of the vehicle in question and charges for the diagnostic work performed on the vehicle. *Id.*

11. On or about July 17, 2015, Respondent applied for title to the vehicle in question upon presentment of a Notice of Possessory Lien, repair order, receipts for certified mailings, Notice of Sale, Proof of Posting and Mailing and a Return of Sale. *Id.*

12. The Notice of Possessory Lien reflects a subscribed and sworn date of June 22, 2015 and a date of abandonment of April 22, 2015. *Id.*

13. By letter dated July 17, 2015, Respondent's title application to the vehicle was rejected on the following grounds: (1) the application did not contain confirmation that all notices were sent by certified mail, with return receipt requested; (2) the amounts claimed on the Notice of Sale and Notice of Possessory Lien were not itemized; (3) incomplete documentation submitted; (4) failure to contact the vehicle lien holder by certified mail at the listed post office box; (5) failure to submitted an executed work order by the service authorizer; (6) failure to provide a photograph of the vehicle; (7) failure to comply with proper title 42 procedure. *Id.*

14. The rejection letter advised that "one resubmission of this title application" could be made "within 15 business days of receipt of the denial letter" and that "[F]or the resubmit" Respondent would "need to complete all new forms, renotify [sic] all interested parties with new Notice of Possessory Lien, wait 10 days, and then mail new Notice of Sale with new sale date." *Id.*

15. On or about September 24, 2015, Respondent resubmitted the title application with the following documentation: (1) the Oklahoma Tax Commission owner information printout as of June 9, 2015; (2) the executed work order by the service authorizer and repair order; (3) the United States Postal Service tracking for one of the certified mailings, return receipts and receipts for certified mailings; (4) Notice of Sale; (5) Notices of Possessory Lien; (6) photograph of the vehicle; (7) Proof of Posting and Mailing; and (8) Return of Sale. *Id.*

16. The Notice of Possessory Lien reflects a subscribed and sworn date of August 26, 2015 and a date of abandonment of April 6, 2015. *Id.*

17. The Notice of Sale reflects a subscribed and sworn date of August 26, 2015, and the date of April 6, 2015 as the date of abandonment and the beginning date of storage or possession. *Id.*

18. By letter dated September 24, 2015, Respondent's resubmission of the title application to the vehicle was rejected for the following reasons: (1) the amounts claimed on the Notice of Sale and Notice of Possessory Lien were not itemized and did not equal the total

compensation claimed; (2) failure to comply with proper title 42 procedure; and (3) failure to mail Notice of Sale and Notice of Possessory Lien in separate certified envelopes. *Id.*

19. The rejection letter advised that “one resubmission of this title application” could be made “within 15 business days of receipt of the denial letter” and that Respondent must “[R]ehold New Sale”. *Id.*

20. On or about November 9, 2015, Respondent again resubmitted the title application with the following documentation: (1) the Tax Commission owner information printout as of October 13, 2015, which reflects no lienholder; (2) separate United States Postal Service tracking for certified mailings sent to LESSEE at ADDRESS in Midwest City, Oklahoma, return receipts and receipts for certified mailings; (3) Proof of Posting and Mailing; (4) Notices of Possessory Lien; and (5) Notice of Sale. *Id.*

21. The Return of Sale filed with Respondent’s resubmission of the title application to the vehicle (2nd attempt at title) was accepted for purposes of Respondent’s 3rd attempt at title. Testimony of SUPERVISOR.

22. Respondent’s 3rd attempt at title to the vehicle was approved and title to the vehicle was issued to Respondent on November 17, 2015. Division Exhibits 1-4 and 1-5.

23. On December 16, 2015, Complainant filed a request to revoke the title issued to Respondent on the vehicle in question. Evidence by official notice, *OAC 710:1-5-36(a)*.

24. Prior to this date, the Oklahoma Independent Automobile Dealers Association on December 10, 2015, filed a request with the Division to revoke the title issued to Respondent on the vehicle in question. *Id.*

25. On December 11, 2015, a stop flag was placed on the title to the vehicle. Division Exhibit 1-5.

26. According to RESPONDENT, the vehicle is sitting without the noted repairs.

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. 2011, § 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 vehicle⁷, and the issuance or revocation of a

⁶ 47 O.S. 2011, § 1102 et seq., as amended.

⁷ *But Cf., Volvo Commercial Finance LLC The Americas v. McClellan*, 2003 OK CIV APP 27, ¶

certificate of title by the Commission is not a positive determination of ownership. *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. 2011, § 1107(B). See, 47 O.S. 2011, § 1105(U)⁸.

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. 2011, § 1106(A)(1) and (2).

5. "Any person who, while lawfully in possession of an article of Section 91 Personal Property⁹, renders any service to the owner thereof by furnishing storage, rental space, material, labor or skill for the protection, improvement, safekeeping, towing, right to occupy space, storage or carriage thereof, 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. 2014, § 91(A)(2). Notice of the special lien shall be mailed by regular, first class United States mail, and by certified mail, return receipt requested, to all interested parties who reside at separate locations no later than sixty (60) days after the first services are rendered; provided that if the services are pursuant to a contract primarily for the purpose of storage or rental of space, the beginning date of the sixty-day period shall be the first day of the first period or partial period for which rental or storage charges remain unpaid. 42 O.S. Supp. 2014, § 91(A)(4)¹⁰. The lien may be foreclosed by a sale of such

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."

⁸ This subsection provides in part that "[t]he Tax Commission shall not be considered a necessary party to any lawsuit which is instigated for the purpose of determining ownership of a vehicle, wherein the Tax Commission's only involvement would be to issue title".

⁹ "Section 91 Personal Property" is defined at 42 O.S. Supp. 2014, § 91(A)(1).

¹⁰ 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 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, including a photograph if the property is Section 91 Personal Property, and the complete physical and mailing address

personal property upon notice of such sale¹¹, which notice shall be posted in two 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, return receipt requested, at least ten (10) days before the date of the sale. 42 O.S. Supp. 2014, § 91(A)(6) and (7). Proceedings for foreclosure shall be commenced no sooner than ten (10) days and no later than 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. 2014, § 91(A)(11).

6. The possessory lien created by § 91 is subordinate to any perfected security interest unless the lien claimant complies with the requirements of § 91. 42 O.S. Supp. 2014, § 91(A)(3). Failure to comply with any requirements of § 91 shall result in (1) denial of any title application, and (2) cause the special lien to be subordinate to any perfected lien. *Id.* “[N]otice of lien not filed in accordance with [§ 91(A)(4)]” is included as an example of a “failure to comply”. 42 O.S. Supp. 2014, § 91(A)(3)(e). When a title application is denied due to the failure to comply with § 91, the

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 charges claimed for each item, the totals of which shall equal the total 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, and written proof of authority to perform the work, labor or service, 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 representing the business must be shown. In place of an original signature and notary seal, a digital or electronic signature or seal shall be accepted.

¹¹ 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, including a photograph if the property is Section 91 Personal Property and if the condition of such property has materially changed since the mailing of Notice of Possessory Lien required pursuant to paragraph 4 of this subsection,
- 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,
- 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 representing the business must be shown. In place of an original signature and notary seal, a digital or electronic signature or seal shall be accepted, and
- g. itemized charges which shall equal the total compensation claimed.

applicant is entitled to correct said noncompliance and “one resubmission of the title application”. 42 O.S. Supp. 2014, § 91(A)(3).

ANALYSIS

Complainant contends that Respondent failed to mail notice of the possessory lien within sixty (60) days after the date first services were rendered on the vehicle and therefore, the Respondent’s title to the vehicle should be revoked. In support of this contention, Complainant argues that first services were rendered on April 6, 2015 when the repair order was opened and Respondent did not mail notice of the possessory lien until June 22, 2015.

Respondent argues that services were performed on the vehicle when they ran the diagnostics, but that the repairs for which the vehicle was placed in their possession have not been made.

The phrase “first services” is not defined by § 91. “Words used in any statute are to be understood in their ordinary sense, except when a contrary intention plainly appears”. 25 O.S. 2011, § 1. The word “first” as an adjective is defined as “preceding all others in time, order, or importance: as **a**: earliest **b**: the first forward gear or speed of a motor vehicle **c**: relating to or having the highest or most prominent part among a group of similar voices or instruments in concerted or ensemble music (~ tenor) (~ violins)”. WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY 466 (1983). The word “service” as a noun and within the context of the sentence is defined as “**4**: the act of serving: as **a**: a helpful act (did him a ~) **b**: useful labor that does not produce a tangible commodity – usu. used in pl. (charge for professional ~s) **c**: serve”. WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY 1076 (1983). Further, § 91(A)(2) provides “[a]ny person who * * * renders any service * * * by furnishing storage, rental space, material, labor or skill for the protection, improvement, safekeeping” of an article of Section 91 Personal Property.

Running a diagnostic on a vehicle, in this case a “trim and electrical system diagnostic” to determine that the “win module” needed to be replaced, is a service involving labor or skill for the improvement of the vehicle. In fact, Respondent’s Repair Order shows “work performed” by an individual and a corresponding monetary charge. Excluding the sub-let of the towing fee, the diagnostics were the initial two services listed on the Repair Order. Further, the Repair Order would not have been opened, but for the work being actually performed.

Respondent’s Repair Order was opened on April 6, 2015; and without evidence to the contrary, is indicative of the date first services were rendered on the vehicle. The first Notice of Possessory Lien was subscribed and sworn to on June 22, 2015; and again without evidence to the contrary, is indicative of the earliest date the notice could have been mailed. The two referenced dates are more than sixty (60) days apart. As such, Respondent did not give notice of the possessory lien in accordance with § 91(A)(4) which constitutes a “failure to comply” with the requirements of § 91. Accordingly, Respondent’s application for title to the vehicle in question should have been denied. Further, because Respondent cannot correct the noncompliance with the requirements of § 91 (Respondent cannot now mail notice of the possessory lien within the 60

day period mandated by § 91(A)(4)), any resubmission of the title application to the vehicle in question should not be accepted.

RECOMMENDATION

Based on the above and foregoing Findings of Fact and Conclusions of Law, it is recommended that Certificate of Title No. ### issued to Respondent, RESPONDENT, on the 2008 Dodge Magnum, Vehicle Identification No. ###, be revoked.

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.

NOTE: The distinction between a Commission Order designated as “Precedential” or “Non-Precedential” has been blurred because all OTC Orders resulting from cases heard by the Office of Administrative Law Judges are now published, not just “Precedential” Orders. *See* OKLA. STAT. ANN. tit.68, § 221(G) (West Supp. 2014) and OKLA. STAT. ANN. tit. 75, § 302 (West 2002). *See also* OTC Orders 2009-06-23-02 and 2009-06-23-03 (June 23, 2009), which also conclude the language of the Statute is “clear and unambiguous.”