

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



JUN 27 2013

ALLY FINANCIAL, INC. (f/k/a GMAC),
Petitioner,

v.

DEPARTMENT OF REVENUE
Respondent.

Docket Number:

OSAH-REV-MVCTA-1341250-60-AK

Kevin Westray, Legal Assistant

VIN No. 1GYFK66847R284639

INITIAL DECISION

I. Introduction

A hearing was held on June 19, 2013, in the above-captioned matter. Notice of the hearing was sent to Petitioner, Respondent, and the following Interested Parties: Cashline Title Loans, LLC, Peter Strott as attorney for Cashline Title Loans, LLC, and Walt Junior Higgins, II.

John McCullough, Esq. represented Petitioner. Douglas Hooper represented Respondent. Cashline Title Loans, LLC chose not to appear. Walt Junior Higgins, II failed to appear.

Petitioner and Respondent seek revocation of replacement Certificate of Title No. 774488112592001, issued on September 20, 2011 reflecting no liens or security interest holders. Petitioner and Respondent further seek to have the original Certificate of Title No. 776405093136002, issued on November 12, 2009, reflecting Petitioner as first security lienholder reinstated. For the reasons set forth below, Respondent's action is **AFFIRMED**.

II. Findings of Fact

1.

Walt Junior Higgins, II purchased a 2007 Cadillac Escalade (VIN 1GYFK66847R284639) from Classic Cadillac Atlanta, Corporation on October 28, 2009. Petitioner underwrote the Retail Installment Contract for the purchase. *Petitioner's Exhibit 2*.

2.

The dealership timely and properly filed documentation with Respondent to issue a Certificate of Title reflecting Mr. Higgins as owner subject to a security interest held by Petitioner. Respondent issued Certificate of Title 776405093136002 on November 12, 2009. The Title reflects Mr. Higgins as owner and contains a notation reflecting Petitioner as first lienholder. The original Certificate of Title was mailed to Petitioner, who has retained the Title to the present time. *Petitioner's Exhibits 1, 3; Respondent's Exhibit 1A*.

3.

On September 16, 2011, Mr. Higgins applied for a replacement title. As part of his application for a replacement title, Mr. Higgins submitted an unsigned typed letter purportedly written by Petitioner's Account Division requesting that the lien held by Petitioner be released. The letter was not, in fact, authorized by Petitioner and Petitioner has never released its lien. *Petitioner's Exhibit 4; Respondent's Exhibit 1B.*

4.

Upon processing Mr. Higgins application for a replacement title, Respondent issued Replacement Title 774488112592001 on September 20, 2011 reflecting Mr. Higgins as the owner, subject to no liens or security interest holders. The Replacement Title includes the language "THIS IS A REPLACEMENT CERTIFICATE AND MAY BE SUBJECT TO THE RIGHTS OF A PERSON UNDER THE ORIGINAL CERTIFICATE" (emphasis in the original). *Respondent's Exhibits 1B, 1C.*

5.

Approximately two weeks after Mr. Higgins obtained the replacement title, he secured a title loan. Upon receipt of documentation reflecting Cashline Title Loans, LLC's security interest in the vehicle, Respondent issued Certificate of Title 777377112789007 on October 5, 2011 reflecting Mr. Higgins as owner and Cashline Title Loans, LLC as lienholder. This title also reflected the language placing all persons on notice that it is a replacement title subject to the rights of a person under the original certificate. *Respondent's Exhibits 1C, 1D.*

6.

On May 5, 2012, Mr. Higgins sold the vehicle to Jason Lerner. Mr. Lerner then applied for a title in his own name. Respondent issued Certificate of Title No. 605734121378907 on May 16, 2012 reflecting Mr. Lerner as owner, subject to no liens or security interest holders. *Respondent's Exhibits 1D, 1E.*

7.

On June 18, 2012, Cashline Title Loans, LLC purchased the vehicle from Mr. Lerner. Then, on July 13, 2012, Cashline Title Loans, LLC submitted a Title Application. Based upon the documentation submitted, Respondent issued Certificate of Title 60172212959907 reflecting Cashline as the owner of the vehicle, subject to no liens or security interest holders. *Respondent's Exhibit 1E.*

8.

In or around November 2012, Petitioner became aware of the replacement title that was issued in September 2011 in which Petitioner's interest was removed from the face of the title. Petitioner then contacted Respondent to request a hearing. Mr. Higgins still owes approximately \$43,000 on the Installment Contract he executed for the purchase of the vehicle. Petitioner currently has physical possession of the vehicle. *Petitioner's Exhibit 4.*

III. Conclusions of Law

1.

According to O.C.G.A. §40-3-6, the exclusive remedy for a person aggrieved by an act or omission to act of the Department under the Motor Vehicle Certificate of Title Act is a hearing, upon request, before a board established by the Commissioner to hear such complaints. The Department has delegated the responsibility for adjudicating such cases to the Office of State Administrative Hearings.

2.

A security interest holder is required to mail or deliver the proper documentation and applicable fee to the commissioner or commissioner's appropriate authorized county tag agent within 30 days of the date of creation of the security interest or lien. Upon receipt of the proper documentation and applicable fee, the commissioner or the commissioner's duly authorized county tag agency issues a new Certificate of Title containing the name and address of the holder of the security interest and of holders of previous unreleased security interests and liens, if any, and mails the certificate to the first holder on it. O.C.G.A. § 40-3-51.

3.

The security holder's interest in the vehicle is perfected upon delivery of the required fee and either the existing certificate of title, if any, and an application for a certificate of title containing the name and address of the holder of a security interest, or a notice of security interest on forms prescribed by the commissioner. O.C.G.A. § 40-3-50.

4.

When a security interest is perfected, it constitutes notice to everybody of the security interest of the holder and is valid against subsequent creditors of the owner, subsequent transferees, and the holders of security interests and liens on the vehicle. O.C.G.A. § 40-3-50.

5.

Here, Petitioner properly perfected its security interest on November 12, 2009. Moreover, Respondent properly mailed the Certificate of Title to Petitioner as the first lienholder. Petitioner continues to have control and possession of that Title.

6.

If a certificate of title is lost, stolen, mutilated or destroyed, or becomes illegible, the owner may obtain a replacement, upon furnishing information satisfactory to the commissioner or authorized county tag agent. The replacement must contain the legend "This is a replacement certificate and may be subject to the rights of a person under the original certificate." Such legend must continue to be noted on the replacement certificate unless the owner shows it has held record title continuously for a period of not less than six calendar months and the record title of the owner has not been challenged, at which time the owner can apply for a replacement title to be issued without the aforementioned legend. O.C.G.A. § 40-3-31(1), (2).

7.

Here, Mr. Higgins applied for a replacement title. However, the original certificate issued on November 12, 2009 had not been lost, stolen, mutilated, or destroyed, nor had it become illegible. Nevertheless, Respondent issued a replacement title to Mr. Higgins. The replacement title contained the requisite legend indicating that it was a replacement title subject to the rights of a person under the original certificate.

8.

When Mr. Higgins applied for the replacement title, he submitted documentation purportedly completed by Petitioner releasing its lien. However, the documentation submitted was fraudulent and should not have been accepted. O.C.G.A. § 40-3-29, 40-3-56.

9.

Georgia law provides "If two or more innocent persons are the victims of the fraud or mistake of another and none of the victims could have reasonably taken steps to detect or prevent the fraud or mistake, the victim who first acquired an interest in a vehicle through any certificate of title shall have such victim's interest protected." O.C.G.A. § 40-3-31(4). Compare General Finance Corp. v. Hester, 141 Ga. App. 28 (1977) (where innocent third party has rights over an unperfected security interest).

10.

Here, Mr. Higgins committed a fraudulent act when he submitted an application for a replacement title. Both Petitioner and Cashline Title Loans, LLC are victims of Mr. Higgin's fraudulent acts. Neither Petitioner nor Cashline could have taken steps to detect or prevent the fraud. Thus, Petitioner, having been the first to acquire an interest in the vehicle and having perfected its security interest prior to Cashline's interest arising, is entitled to protection of its interest.

11.

Finally, Respondent is authorized to revoke a certificate of title, upon notice and reasonable opportunity to be heard, if the certificate of title was fraudulently procured or erroneously issued. O.C.G.A. 40-3-41.

12.

The replacement title that Mr. Higgins obtained, and all titles flowing from that title, must be revoked because Mr. Higgins obtained the replacement title fraudulently. Moreover, Petitioner perfected its security interest and has not released it, thus that interest must be protected. O.C.G.A. § 40-3-56.

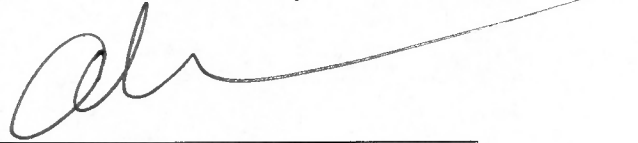
13.

Based on the foregoing, Respondent is authorized to revoke the certificate of title issued on September 11, 2011 reflect Mr. Higgins as owner, subject to no liens or interests. Respondent is further authorized to reinstate the certificate of title issued on November 12, 2009 reflecting Petitioner as first security lienholder.

IV. Decision

Respondent's action in revoking Certificate of Title 774488112592001, and in reinstating Certificate of Title 776405093136002 reflecting Petitioner as first security lienholder is hereby **AFFIRMED**.

This 26th day of June, 2013.



Ana Kennedy
Administrative Law Judge