

NOVA SCOTIA COURT OF APPEAL

Cite as: St. Margaret's Bay Yacht Division v. Nova Scotia (Provincial Tax Commission), 1993 NSCA 25

Chipman, Roscoe and Freeman, JJ.A.

BETWEEN:

ST. MARGARET'S BAY YACHT DIVISION)	Stewart McInnes, Q.C.
)	for the Appellant
Appellant)	
)	
- and -)	John D. Wood
)	for the Respondent
)	
THE PROVINCIAL TAX COMMISSION,)	
Health Services Tax Division, Department)	
of Finance)	
)	
Respondent)	Appeal Heard:
)	February 16, 1993
)	
)	Judgment Delivered:
)	February 16, 1993
)	
)	

THE COURT: Appeal dismissed without costs, per oral reasons for judgment of Roscoe, J.A.; Chipman and Freeman, JJ.A. concurring.

The reasons for judgment of the Court were delivered orally by:

ROSCOE, J.A.:

This is an appeal from a decision of the Tax Review Board confirming the decision of the Provincial Tax Commissioner who assessed the appellant for sales tax and interest totalling \$15,252.37 in respect to the purchase of a yacht. The yacht was purchased by the appellant in April 1985. The notice of assessment pursuant to s. 36(2) of the **Health Services Tax Act** is dated April 6, 1990.

There are two issues raised on the appeal: whether the Tax Review Board erred by, 1) finding that the notice of assessment was not statute-barred by s. 36(4) of the **Health Services Tax Act**, and 2) in failing to find that the yacht was purchased for resale and therefore exempt pursuant to the **Health Services Tax Act**.

Section 36(4) of the **Health Services Tax Act** is as follows:

" In making an assessment pursuant to subsection (2), the Commissioner shall not consider a period greater than four years prior to the date of the assessment unless the person has made any misrepresentation that is attributable to neglect, carelessness or wilful default or if there is evidence that that person has committed fraud."

The Tax Review Board in its decision dated August 5, 1992 carefully reviewed the evidence and the applicable sections of the **Health Services Tax Act**. The Board made findings of fact, some of which were based on the credibility of the appellant's owner, Mr. John E. Moore. The Board did not accept the evidence that Mr. Moore purchased the vessel for resale. The Board found (at p. 6) that Mr. Moore "misrepresented to the Tax Commission in its application to be a vendor, and to Mr. Beech [the auditor] that in July 1985 Mr. Moore was in the retail business of selling sailing craft - yachts. It was also a misrepresentation for him to claim that he was purchasing the Beneteau 325 for resale."

The Board also noted (on p. 7):

" There has been no real explanation offered by the appellant why the vessel was not sold. Some evidence was

offered that the market for new vessels got progressively worse but there is no evidence that this was so in the years 1985, 1986 or 1987. Of more importance is the fact that there had been no description whatsoever of any effort to sell the boat in the years 1985 - 1988 (or thereafter). Mr. Moore's avowed intention that the purchase was for resale is at times a tentative assertion and is inconsistent with the evidence before the Board."

And further at pp. 8 and 9 of the Board's decision:

" The only advertising that appears to have been done was putting the brochure up in his store. The store was not acquired until September 1988. The evidence before me is that there was no advertising at all except he says by word of mouth. I find it difficult to accept, and I do not accept, that a businessman with Mr. Moore's experience would spend \$75,000.00 for a piece of property that is supposed to be in inventory and not on any occasion advertise it for sale. . . . In fact the evidence shows he did nothing of any note with the boat other than sail it."

. . .

" It is also significant to note that Mr. Moore acknowledges that over the years he has paid many of the expenses of the boat personally, including Health Services Tax on the parts that have gone on it. If the yacht was truly a demonstrator, these expenses would naturally be business expenses and surely would have been claimed as such. Mr. Moore suggests that the vessel was a 'demonstration unit'. This is also not accepted. He was not an authorized dealer nor do I find that he had any serious discussions with Beneteau representatives. He tendered one letter from Bentley Collins many years after he had purchased the vessel. If he was serious with respect to getting into the business of selling the Beneteau 325 that he had purchased, or other vessels like it one would expect some evidence to support such intention. However, quite the contrary is found here.

The only sailing vessels that have been sold by Mr. Moore or any of his related businesses are some repossessions that he handled for some financial institutions in 1991. He has sold a number of boats through his MMS franchise. These are all small craft - inflatable tenders. After considering all of the evidence before me and representations made, I find as a fact that the vessel was not purchased for resale and that the appellant made misrepresentations to the Provincial Tax Commission in order to obtain a tax number and purchase the vessel exempt of tax."

The appeal to this Court is pursuant to s. 21 of the **Health Services Tax Act** which is as follows:

"21 The Minister or the appellant may appeal from the decision of the Nova Scotia Tax Review Board to the Appeal Division of the Supreme Court upon any point of law raised upon the hearing of the appeal."

A review of the evidence and the entire record in this proceeding persuades us that there was evidence to support the findings of fact made by the Tax Review Board. It is not for this Court to retry the case and substitute its opinion for that of the Board. The issues raised by the appellant relate to the determination of the facts and do not raise a question of law.

The appeal is dismissed without costs.

J.A.

Concurred in:

Chipman, J.A.

Freeman, J.A.