

CANADA / JUDGMENT

Shameti v. The King

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Docket: 2023-1404(GST)G

BETWEEN: DURIM SHAMETI,
 Appellant,
 and
 HIS MAJESTY THE KING,
 Respondent .
Appeal heard on June 22 and 23, 2026, at Toronto, Ontario
Before: The Honourable Justice J. Scott Bodie

Appearances :

Counsel for the Appellant: Robert McGlashan
 Everton Torres

Counsel for the Casey Bee
Respondent:

JUDGMENT

In accordance with the attached Reasons for Judgment, the appeal made under the Excise Tax Act from the Notice of Assessment dated March 21, 2022, is dismissed without costs.

Signed this 17th day of September 2026.

“J. Scott Bodie”

Bodie J.

Citation: 2026 TCC 171

Date: 20260917

Docket: 2023-1404(GST)G

BETWEEN:

DURIM SHAMETI,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Bodie J.

INTRODUCTION

[1] Mr. Shameti purchased a property located at 330 Byng Avenue in Toronto, Ontario (the “Byng Property”) on May 16, 2012, for \$1,070,000. He and his family lived in the original house on the Byng Property (the “Original Home”) until November 2015 when they moved to a rental property. At that time, the Original Home was demolished, and a new luxury home was built in its place (the “New Home”). The family returned to the Byng Property and moved into the New Home in October 2016. They remained in the New Home for approximately one year. They sold the Byng Property effective November 1, 2017, for \$4,148,000.

[2] The Minister of National Revenue (the “Minister”) assessed Mr. Shameti for unreported Goods and Services Tax/ Harmonized Sales Tax (“GST/HST”) in the amount of \$539,240 for the period of November 1 to November 30, 2016. It is the Minister’s position that Mr. Shameti undertook the construction of the New Home in course of an adventure or concern in the nature of trade. Accordingly, he was a builder with respect to the New Home, within the meaning of the Excise Tax Act (the “Act”) and therefore was required to self-assess GST/HST when he and his family moved back to the Byng Property following the substantial completion of the construction of the New Home.

[3] Unless otherwise stated, all statutory references are to the Act.

[4] In contrast, it is Mr. Shameti’s position that he cannot be considered a builder with respect to the New Home. He testified that he and his family moved to the Byng Property with the intention of making it their forever home. However, in 2015 he decided to tear down the Original Home after he received the promise of financial assistance from his father, so that he could build the home of his dreams for his family, including his father who lived in Albania at the time. It is his position that he never would have attempted to build the New Home without the promise of financial assistance from his father. He was motivated to build the new luxury home by the thought of his father coming to Canada to live with he and his family in what Mr. Shameti believed were appropriate accommodations for his father. Unfortunately, his father passed away in March 2016. After his father died, it became apparent that his father’s promise of financial assistance to build the New Home would not be fulfilled, leaving Mr. Shameti with no choice but to change course, and sell the Byng Property in 2017.

[5] In the alternative, if Mr. Shameti was a builder, it is his position that he qualified for the exception to the self-supply/self-assessment rules. When he and his family returned to the New Home in October 2016, it was used by them primarily as a place of residence until it was sold approximately one year later in November 2017, due to the financial difficulties he faced because of the unfulfilled promise of his father.

ISSUES

[6] Accordingly, this appeal raises the following three issues:

Was Mr. Shameti a builder in relation to the New Home that was built on the Byng Property?

If yes, was he required to self-supply the New Home and thereby self-assess GST/HST after he and his family moved into the New Home?

If yes, was Mr. Shameti excepted from the requirement to self-assess GST/HST because after he moved into the New Home, it was used primarily as a place of residence for himself and his family?

[7] I will consider each of these issues in turn.

OVERVIEW

[8] As set out below, the settlement of these issues depends largely on a determination of Mr. Shameti's motivations at various stages of this case. Many of what I would consider to be key indicators of such motivations were uncorroborated by either witness testimony apart from Mr. Shameti's, or documentary evidence, leaving only Mr. Shameti's oral testimony on which to make such a determination. In my view, Mr. Shameti's testimony left too many gaps and contained too many inconsistencies with respect to key elements of the explanation of his motivations to be compelling. Accordingly, this appeal is dismissed without costs.

ANALYSIS/DISCUSSION

1. Was Mr. Shameti a builder in relation to the New Home that was built on the Byng Property?

[9] The term "builder" is defined in subsection 123(1) in relation to a home, to mean a person who at a time when the person has an interest in the real property on which the home is situated, carries on or engages another person to carry on, the construction or substantial renovation of the home. However, where the person is an individual, such individual is excluded from the definition of the term "builder" where the construction or substantial renovation is carried on otherwise than in the course of the individual's business or an adventure or concern in the nature of trade. In other words, a person who builds a home as their own personal residence is not a builder for purposes of the Act.

[10] The sole witness who appeared in the hearing of this appeal was Mr. Shameti. He testified that he purchased the Byng Property on May 16, 2012. In November 2015, he hired LI Dream Homes to demolish the Original Home on the Byng Property and commence construction of the New Home.

[11] Accordingly, applying the applicable criteria to be considered a builder, in November 2015, Mr. Shameti had an interest in the Byng Property and engaged another person to carry on the construction of the New Home. Neither party disputed these facts. The first criteria for being a builder were thereby met.

[12] The issue then is whether Mr. Shameti could fit within the exclusion to the definition of the term “builder” described above. The definition excludes an individual who builds a home otherwise than in the course of a business or an adventure or concern in the nature of trade. The evidence did not show, and the Respondent did not allege, that Mr. Shameti engaged LI Dream Homes in the course of a business. The Respondent did allege however, that Mr. Shameti purchased, demolished, constructed the New Home and then sold the Byng Property in the course of an adventure or concern in nature of trade.

A. Did Mr. Shameti Purchase, Demolish, Construct the New Home and then Sell the Byng Property in the Course of an Adventure or Concern in the Nature of Trade?

(i) Law

[13] In *Happy Valley Farms Ltd. v. Her Majesty the Queen*, [1986] CTC 259 at page 262, Rouleau, J. noted that a substantial amount of jurisprudence has arisen from the use of the phrase “adventure or concern in the nature trade” since the phrase first appeared in the extended definition of “business” in subsection 248(1) of the Income Tax Act. Rouleau, J. concluded that the essential question that courts face when considering this phrase is whether the asset in question was acquired by the taxpayer as an investment. If not, then any gain realized by the taxpayer on a sale of the asset is taxable as income.

[14] Rouleau, J. also observed that in answering this question, it is necessary to examine all of the facts of a particular case including, the course of conduct, the nature of the subject property, the probability of the asset producing income without the need to be turned over and the similarity of the transaction in question to a trading transaction.

[15] He then set out and described several tests that courts have applied in distinguishing between an income and a capital gain. He wrote that those tests include: the nature of the property sold, the length of period of ownership, the frequency or number of similar transactions by the taxpayer, work expended on or in connection with the property realized, the circumstances that were responsible for the sale of the property and the taxpayer’s motive.

[16] Even though the tests described in the Happy Valley decision were developed in the context of the Income Tax Act , they are often cited in GST/HST cases which consider the application of the phrase “adventure or concern in the nature of trade” . Not all these tests are always relevant in GST/HST cases where the aim is to distinguish between a commercial purpose and a residential purpose, as opposed to the characterization of income under the Income Tax Act .

[17] However, in all cases in which the phrase has been considered, either in the GST/HST context or in the context of the Income Tax Act , it is the motive of the taxpayer in undertaking the activity at issue that emerges as the preeminent consideration for a court considering the application of such phrase (Coates v. Her Majesty the Queen , 2011 TCC 74; Canada Safeway Limited v. Her Majesty the Queen , 2008 FCA 24; Caddell v. His Majesty the King, 2026 TCC 27). A taxpayer who is not found to be carrying on a business will nevertheless be engaged in an adventure or concern in the nature of trade, where an undertaking in respect of a property is commenced with the motivation of generating a profit from the sale of such property.

[18] When determining motivation, statements provided in the taxpayer’s testimony can be useful but cannot be considered determinative and must therefore be viewed cautiously by a court. For such statements of a taxpayer may too easily be coloured by self interest, faulty memory and the mere passage of time. Therefore, to determine motivation, resort must often be had to inferences flowing from surrounding evidence as opposed to direct evidence (Racine, Demers and Nolan v. MNR , [1965] CTC 150 (Ex. Ct) at page 159). Depending on the facts of a particular case, the other factors listed by Rouleau J. can be important guide posts a court may look to in drawing and weighing the importance of such inferences.

(ii) Facts

a. Facts on which the Parties are Aligned

[19] I will review Mr. Shameti’s testimony regarding his motivations later in these reasons. Before doing so, I will review the surrounding facts established by the evidence, on which the parties were largely aligned.

[20] Mr. Shameti, who was born in Albania and immigrated to Canada in the early part of this century, owns a company, DSCON Renovation Inc. through which he has experience with construction, particularly the installation of dry wall. He purchased the Byng Property on May 16, 2012, at which time he and his family moved into the Original Home which they occupied as their residence continually until November 2015. The Byng Property was purchased for \$1,070,000, which was financed in part by a mortgage of \$800,000 granted to Mr. Shameti by Home Trust Company.

[21] On November 1, 2014, Mr. Shameti hired an architect to design a new home. Mr. Shameti later retained the services of LI Dream Homes to build the New Home. In November 2015, Mr. Shameti and his family moved from the Byng Property to a rented property, after which the Original Home was demolished, and work began on the New Home. On December 17, 2015, Mr. Shameti was granted a second mortgage over the Byng Property by Sar-May Finance Corporation

in the principal amount of \$1,050,000 to pay for the costs of construction. In the 2015 taxation year Mr. Shameti and his wife reported combined household income of approximately \$40,000.

[22] On May 10, 2016, Mr. Shameti's father died in Albania.

[23] In October 2016, Mr. Shameti and his family moved out of their rented property, returned to the Byng Property and moved into the New Home. At that time, the New Home was not completely finished, and Mr. Shameti spent the ensuing months completing or overseeing the completion of what were described as "minor repairs" . On January 24, 2017, Mr. Shameti was granted a third mortgage in respect of the Byng Property in the principal amount of \$280,000 by Sar-May Finance Corporation. It is not entirely clear what the proceeds of this third mortgage were used for, but it appears that they were used for some combination of furniture for the New Home, the completion of its construction and interest on the other two outstanding mortgages.

[24] On April 20, 2017, the City of Toronto issued an Occupancy Permit in respect of the New Home.

[25] On May 11, 2017, Mr. Shameti listed the New Home for sale with Home Life Frontier Realty Inc. Brokerage for \$4,268,000. The listing material described the New Home as follows:

Utterly magnificent custom residence on a pool sized lot. Over 4000 square feet of elegant workmanship/superior finishes and designs. Utmost attention to details. Custom cut Indiana limestone exterior. Inspire roof. Mahogany library with built-ins and paneling. Gourmet kitchen with granite slab counter tops. Elevator to all levels. Heated basement floor. Mahogany wine cellar. Miele appliances. Range. Panelled fridge and refrigerator, oven, microwave, panelled dishwasher, wine cooler, front hood washer, dryer, under ground sprinkler, driveway and steps with night lights, sound system, alarm and security camera.

[26] Mr. Shameti entered into an Agreement of Purchase and Sale with respect to the Byng Property on June 5, 2017, for a sale price of \$4,148,000. The transaction closed on November 1, 2017, at which time Mr. Shameti and his family moved to a new house in Toronto which they purchased for \$1,880,000. The family lived there for approximately 7 years before they sold it and moved to a rented apartment.

b. Mr. Shameti's testimony

[27] Mr. Shameti was the only witness who appeared at the hearing of this appeal. He impressed me as an intelligent and wily man, who has done well in building a life for himself and his family since moving to Canada. However, I found his testimony to be short on detail, often stilted and overly scripted. He appeared to be easily agitated when pressed for details in both his direct and cross examinations.

[28] It was Mr. Shameti's testimony that he and his wife purchased the Byng Property in 2012 for the purpose of building their dream home and living in it for the long term. He even indicated that he hoped one of his sons would stay in the New Home with he and his wife well into adulthood.

[29] He said that he often returned with his family to Albania to visit his parents and his siblings. He testified that he has several siblings, all of whom continue to live in Albania. On one such trip during the winter of 2014-2015, he told his father about the place he wanted to build on the Byng Property. He said that his father told him, in the presence of his eldest brother, that he would sell his farm, equipment and animals that Mr. Shameti estimated had a total value of over \$1,000,000 and give it to Mr. Shameti so that he could build the dream home he had planned. Mr. Shameti said that his father told him he intended to move to Canada after he sold the farm and would live with Mr. Shameti and his family. Mr. Shameti said that it was because his father planned to live with him that the plans for the New Home included an elevator.

[30] Mr. Shameti said that he returned to Albania in August of 2015, and his father confirmed his intention to sell his farm, give the majority of the proceeds to Mr. Shameti to finance the construction of the New Home and move to Canada to live with Mr. Shameti. On the strength of the bond between father and son, characterized in part by the absolute faith in the words of the other, Mr. Shameti proceeded with his construction plans for the New Home which commenced in November of that year.

[31] Unfortunately, on March 10, 2016, Mr. Shameti's father passed away. At the time of his father's death there was nothing in writing between Mr. Shameti and his father with respect to the arrangement to sell the farm, finance the construction of Mr. Shameti's home and then move to Canada. Further Mr. Shameti's father left no will. Mr. Shameti testified that it was custom in Albania to rely on verbal promises, rather than to reduce promises to writing. He testified that he considered his father's verbal promise to be a guarantee and that would not have started construction of the New Home without such a guarantee.

[32] After his father's death, Mr. Shameti continued with the construction of the New Home, to which he and his family ultimately moved in October 2016. He testified that despite the death of his father, he continued to believe that the guarantee he felt his father had given him would be honoured until around the first anniversary of his father's passing when he returned to Albania. It was then that he learned from his younger brother that there may be an issue with him receiving the proceeds from any potential sale of his father's farm. In late April or May 2017 his younger brother confirmed that no proceeds would be coming to Mr. Shameti.

[33] Mr. Shameti testified that this news was devastating to him and his family because without the expected funding from Albania, he would be unable to carry the three mortgages that had been issued with respect to the Byng Property, and the family would have to move from their dream home. Accordingly, on May 11, 2017, Mr. Shameti listed the Byng Property for sale.

[34] During his testimony, Mr. Shameti said that at the time of his death, his father was 85 years old and had never visited Canada, as Mr. Shameti had not yet acquired the appropriate conditions to welcome him.

(iii) Analysis

[35] On the whole, the evidence of Mr. Shameti as to the arrangements with his father and the role they played in motivating him to demolish the Original Home, construct the New Home and then sell it, is not sufficiently cogent and detailed to be persuasive.

[36] His testimony regarding these matters was uncorroborated by any other witnesses or anything in writing. Without any such corroboration I am not prepared to take judicial notice of customs in Albania. Further, Mr. Shameti's testimony did not provide sufficient explanation for why his father would promise substantially all of his estate to him to the exclusion of his many siblings in Albania in order to move to a country which he had never previously visited, at an advanced age or why or how the gift which he had relied on without question was declared void by a younger brother. There was no evidence presented of any discussions or proceedings with respect to the distribution of his father's estate prior to or after April or May 2017, when Mr. Shameti said he was told that the proceeds he expected would not be forthcoming.

[37] Further, Mr. Shameti's testimony with respect to these matters is inconsistent with his pleadings in the Notice of Appeal. Paragraph 11 of the Notice of Appeal contains the following statement: "[Mr. Shameti's father] planned to sell the majority of his assets, move out and live with [Mr. Shameti's] eldest brother" . On being asked in cross examination for an explanation for this inconsistency with respect to a key aspect of his stated motivations, Mr. Shameti was unable to provide a clear and convincing explanation.

[38] As I do not find Mr. Shameti's uncorroborated testimony, with respect to his motivation for demolishing the Original Home, constructing the New Home and then selling the Byng Property persuasive, I am left with the following undisputed facts from which to infer Mr. Shameti's motivations:

He purchased the Byng Property in May 2012 for \$1,070,000.

In November 2014, Mr. Shameti retained the services of an architect to design the New Home, which by all accounts was a high-end, luxury home, complete with top-of-the-line appliances, custom finishings and an elevator.

In November 2015, Mr. Shameti and his family moved out of the Original Home and moved to a rented home. The Original Home was then demolished, and LI Dream Homes, a construction company retained by Mr. Shameti, started construction of the New Home.

Approximately one year later, and before the construction on the New Home was completed, the family returned to the Byng Property and moved into the New Home.

After Mr. Shameti completed or oversaw the completion of the New Home, an Occupancy Certificate was issued in respect of the New Home on April 20, 2017.

The Byng Property was listed for sale on May 11, 2017, for \$4,268,000.

On June 5, 2017, the Byng Property was sold for \$4,148,000.

(iv) Conclusion

[39] The definition of “builder” in section 123 defines the term to mean a person who at a time when the person has an interest in real property, engages another to carry on for the person the construction of a home otherwise than in the course of a business or an adventure or concern in the nature of trade.

[40] Based upon the evidence, I am prepared to accept that at the time Mr. Shameti purchased the Byng Property in May 2012, he purchased it as a personal residence and therefore was not a builder at that time. There is no evidence of him looking to construct a new home on the Byng Property until he hired an architect in November 2014.

[41] However, based on the inferences I draw from the established facts outlined above, I find on a balance of probabilities that at the time he demolished the Original Home and retained LI Dream Homes to construct the New Home he was no longer intent on living at the Byng Property for residential purposes. Rather, on balance of probabilities, I find he was motivated by the intention to build a new luxury home on the Byng Property and to sell it at a profit. He therefore undertook these activities in the course of an adventure or concern in the nature of trade.

[42] At the time he commenced these activities he was therefore a builder with respect to the New Home.

2. Was Mr. Shameti Required to Self-Assess GST/HST after he and his Family Moved into the New Home?

[43] Under subsection 191(1) where a builder of a home the construction of which has been substantially completed

- (a) is an individual;
- (b) occupies the home as a place of residence; and
- (c) is the first person to occupy the home as a place of residence after substantial completion of the construction;

the builder shall be deemed to have made and received, at the later of the time the construction is substantially completed, and the home is occupied, a taxable supply of the home by way of sale. In such circumstances, the builder is required to self-assess GST/HST in respect of the supply, calculated on the fair market value of the home at the later of those times.

[44] The terms “substantially completed” or “substantial completion” are not defined in the Act. In *Lim v. Canada* [2000] GSTC 1 (TCC) at paragraph 16, the Court observed, “there must be a certain common-sense assessment of what, on the facts of the particular case, a reasonable person would regard as substantial completion” .

[45] There is no specific evidence submitted by either party at trial, on whether the New Home was substantially completed at the time that Mr. Shameti and his family moved into the New Home in October 2016. I do note however that Mr. Shameti testified that after he and his family moved into the New Home, they lived in it as their residence and that there were only what he

described as “minor repairs” left to be completed. In my view, in such circumstances, a reasonable person would consider the New Home to have been substantially completed at the time Mr. Shameti and his family moved into the New Home in October 2016.

[46] Further, the evidence shows that at such time, Mr. Shameti occupied the New Home as a place of residence and that he and his family were the first individuals to occupy the New Home as a place of residence.

[47] Accordingly, in the circumstances Mr. Shameti was required to self-assess GST/HST after he and his family moved into the New Residence in October 2016.

[48] I note that Mr. Shameti did not challenge in his pleadings nor was any evidence submitted at trial with respect to the calculation of the amount of GST/HST assessed.

3. Is Mr. Shameti excepted from the requirement to self-assess GST/HST?

[49] Subsection 191(5) provides for an exception to the self-supply/self-assessment rule contained in subsection 191(1).

[50] For this exception to apply, the following requirements must be met:

the builder must be an individual;

the home must have been used primarily as a place of residence for the individual;

such use must have occurred after construction of the home was substantially completed;

the home was not primarily used for any other purpose between the time that its construction was substantially completed, and the time it was used primarily as a place of residence for the individual;

the builder did not claim any input tax credits in respect of the acquisition or improvement to the home.

[51] In his testimony, Mr. Shameti said that he did not claim any input tax credits with respect to the acquisition of the Byng Property nor the construction of the New Home. The Respondent did not dispute this. Therefore, requirement e. above, is met. Further, requirement a. set out above is obviously met. This leaves only the requirements b., c. and d. I note that if it is determined that Mr. Shameti did not use the New Home primarily as a place of residence as required by requirement b. set out above, then requirements c. and d. will not come into play. Accordingly, I will first consider the application of requirement b.

A. Was the New Home used primarily as a place of Residence for Mr. Shameti and his Family?

[52] Based on Mr. Shameti’s testimony, I accept that he and his family used the New Home as their place of residence for approximately one year between October 2016 and November 2017. The question however, is whether it was used primarily as their place of residence?

[53] The caselaw makes it clear that while intentions can change over time for various reasons, to meet the requirement set out in b. above, the taxpayer's initial intention when he or she occupies the home could not have been to sell it. It must have been to reside in it. The property cannot be inventory at the time the property is occupied (see *Lacina v. R* , [1997] FCJ No. 998 at paragraph 17; *Caddell v. His Majesty the King* , 2026 TCC 27 at paragraphs 75-77; *Bryan v. His Majesty the King* , 2024 TCC 108 at paragraph 32).

[54] According to the Canada Revenue Agency's (the "CRA") letter proposing to confirm the assessment of GST/HST, dated October 25, 2022, during the audit Mr. Shameti told the CRA that at the time he and his family moved into the New Home he had sought the advice of friends who told him that "residency in the property for at least 1 year would take care of the GST issue."

[55] On cross-examination, when the proposition was put to him by counsel for the Respondent, Mr. Shameti rejected the suggestion that his only motivation in moving into the New Home prior to selling it was to avoid paying the GST/HST. He said that he had never even heard of the GST until he received the self-supply assessment in respect of the New Home from the CRA. He made this claim at least one other time during his testimony. This assertion does not ring true for someone such as Mr. Shameti who has operated as both a consumer and as a business operator in the Canadian economy for over two decades. It undermined his credibility.

[56] In my view, on a balance of probabilities, Mr. Shameti moved his family into the New Home primarily with the intention to sell it at the earliest possible time, rather than to reside in it. For the reasons described above I am unpersuaded by his explanation of his motivations in demolishing the Original Home in 2015, constructing the New Home throughout 2016 and then selling the Byng Property in 2017.

[57] Therefore based on the facts that after he moved into the New Home in October 2016 he set about completing or overseeing the completion of "minor repairs" with respect to the New Home, which led to the issuance of an occupancy certificate on April 20, 2017, which in turn led to the listing of the Byng Property for sale three weeks later at a price that would generate a significant profit over the original costs of the Byng Property, I conclude that on a balance of probabilities, after construction of the New House was substantially completed he used the Byng Property primarily as inventory rather than as a place of residence. He moved into the New Home with the intention to sell it at the earliest opportunity. That intention did not change in the six and one-half months between the time he moved into the New Home and the time that he listed it for sale.

[58] Accordingly, Mr. Shameti is not entitled to rely on the exception to the self-supply/self-assessment rules contained in section 191.

CONCLUSION

[59] The appeal is dismissed without costs.

Signed this 17th day of September 2026.

“J. Scott Bodie”

Bodie J.

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2026 TCC 171

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REASONS FOR JUDGMENT BY:

The Honourable Justice J. Scott Bodie

DATE OF JUDGMENT:

September 17, 2026

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