

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 04-3455

**KEPOINT PRESERVATION TRUST
ORG., BY AND THROUGH J. BROWN,
JOINT TENANT TRUSTEE

v.

D. MICHAEL FISHER, INDIVIDUAL;
COMMONWEALTH OF PA;
COMMONWEALTH OF PA DEPARTMENT OF
REVENUE BUREAU OF INDIVIDUAL TAXES;
COMMONWEALTH OF PA BOARD OF
FINANCE AND REVENUE; COMMONWEALTH OF PA
DEPARTMENT OF REVENUE BOARD OF APPEALS;
THE TAX CLAIM BUREAU COURT HOUSE;
EDWARD W. GILLESPIE, TRAPPE BORO TAX
COLLECTOR; COUNTY OF MONTGOMERY
RECORDER OF DEEDS

*S. James Brown,

Appellant

*(Pursuant to Rule 12(a), F.R.A.P.)

**(Dismissed Per Clerk's Order of 9/16/04)

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civ. No. 00-04564)
District Judge: Honorable Mary A. McLaughlin

Submitted Under Third Circuit LAR 34.1(a)
February 28, 2005

BEFORE: ROTH, McKEE and ALDISERT, CIRCUIT JUDGES

(Filed: April 4, 2006)

OPINION

PER CURIAM

S. James Brown, as the “Joint Tenant Trustee” acting on behalf of Kepoint Preservation Trust, an “independant, unincorporated, private inter vivos trust organization,” filed a complaint in the U.S. District Court for the Eastern District of Pennsylvania, claiming that the imposition of state taxes after real estate was transferred from an individual to the trust violated the Contracts Clause, U.S. Const. Art. I, § 10, cl.1, and Pennsylvania law. The District Court dismissed the claims against most Defendants on the basis of Eleventh Amendment immunity, the Tax Injunction Act, and its discretion to decline to hear state law claims under 28 U.S.C. § 1367(c). We affirmed that order to the extent that S. James Brown (“Brown”) was a party to the action below and was an appellant in his own right, although we dismissed Kepoint Preservation Trust as an appellant because Brown had not obtained counsel for it. *See Kepoint Preservation Trust v. Fisher*, No. 01-3708 (3d Cir. July 3, 2002).

The Montgomery County Recorder of Deeds and the Montgomery County Tax

Claim Bureau (“Tax Claim Bureau”), neither of whom had responded to the suit by the time that the first appeal was filed, remained in the case. Brown voluntarily dismissed the claims against the Montgomery County Recorder of Deeds. As an individual and as the “Joint Tenant Trustee” of Keport Preservation Trust, a “private trust agreement,” Brown then filed an amended complaint against the Tax Claim Bureau. In the amended complaint, Brown maintained his constitutional claims, although he complained about the unconstitutionality of a different state tax (Pennsylvania’s General County Assessment Law, 72 P.S. § 5020-101 *et seq.*), and omitted the state law claim. On the Tax Claim Bureau’s motion, the District Court dismissed the amended complaint. Brown appeals,¹ and the Tax Claim Bureau moves for summary affirmance and for just damages and double costs. For the reasons set forth below, we will affirm.

The Tax Claim Bureau questions Brown’s standing. Brown, however, is the real party in interest who claims an injury to his right to contract caused by tax collection efforts, including the threat of the sale of his home, which could be redressed if a court ruled in his favor.

Although Brown has standing, he does not have a meritorious appeal because most of the reasons for the dismissal of his earlier claims apply equally here. Specifically, as we and the District Court have previously explained, the Tax Injunction Act bars the injunctive and declaratory relief sought, *see California v. Grace Brethren Church*, 457

¹Keport Preservation Trust, dismissed for want of prosecution, *see* L.A.R. 107.2, is no longer a party to this appeal.

U.S. 393, 408 (1982), and “the free-standing principle of comity” bars damages, *Wright v. Pappas*, 256 F.3d 635, 637 (7th Cir. 2001). Furthermore, the *Rooker-Feldman* doctrine bars review of his claims because Pennsylvania court rulings (that the Pennsylvania Board of Assessment Appeals is the exclusive forum for Brown’s claims), in the state court suit that Brown filed after his last federal appeal, are inextricably intertwined with Brown’s federal suit. Therefore, the order of the District Court will be affirmed.

In addition, the Tax Claim Bureau’s motion for just damages and double costs pursuant to Federal Rule of Appellate Procedure 38 will be granted. We may award damages under Rule 38 when an appeal is “wholly without merit.” *See Nagle v. Alspach*, 8 F.3d 141, 145 (3d Cir. 1993). Previously, we affirmed the dismissal of claims similar to those at issue here. Even though Brown protested a different state tax in his amended complaint, his arguments and their refutations remain the same. In addition, since his last appeal, the Pennsylvania state courts have also dismissed his related claims. For these reasons, and after consideration of what amount would equitably compensate the Tax Claim Bureau, *see Beam v. Bauer*, 338 F.3d 106, 108-09 (3d Cir. 2004), we will award Rule 38 damages in the amount of \$1,500.00. Costs will be taxed against the Appellant.