

APPENDIX B

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-3005

TONY PING YEW,
Executor of Estate of John Y. Wei,
Appellant

v.

ATTORNEY GENERAL NEW JERSEY;
HON. MARY SIOBHAN BRENNAN, J.T.C.
Tax Court of New Jersey

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 2-23-cv-02069)
District Judge: Honorable Madeline C. Arleo)

Submitted Pursuant to Third Circuit LAR 34.1(a)
March 19, 2024

Before: BIBAS, PORTER, and
MONTGOMERY-REEVES, Circuit Judges

(Opinion filed: March 21, 2024)

OPINION*

PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Tony Ping Yew appeals pro se from the District Court's order dismissing his complaint. We will affirm.

In May 2019, Yew filed a complaint on behalf of the estate of John Y. Wei in the New Jersey Tax Court seeking an inheritance-tax refund. The Honorable Mary Siobhan Brennan entered summary judgment against him and, when Yew sought reconsideration, advised him that he was not permitted to litigate claims on behalf of Wei's estate without an attorney. Yew sought leave to appeal, but the Appellate Division of the Superior Court and the state Supreme Court denied his requests.

Yew then filed a complaint in the District Court. He claimed that Judge Brennan and the Attorney General of New Jersey had violated his Fourteenth Amendment rights by precluding him from litigating his inheritance-tax claim. By way of relief, Yew asked the District Court to vacate Judge Brennan's summary judgment ruling and remand the matter to "permit [him] to continue his suit as

Unrepresented Executor of Estate of John Y. Wei in the State court." Compl. 3, ECF No. 1. He also asked the District Court to vacate Judge Brennan's order denying his recusal motion. The defendants moved to dismiss the complaint on various grounds, including that the District Court lacked jurisdiction under the Rooker-Feldman doctrine and that the defendants were immune from suit. The District Court granted their motion on the latter ground and dismissed Yew's complaint. He appealed.¹

¹ We have jurisdiction under 28 U.S.C. § 1291. We may affirm on any basis supported by the record.

See Fairview Twp. v. EPA, 773 F.2d 517, 525 n.15 (3d Cir. 1985).

We will affirm the dismissal of the complaint. Yew asked the District Court to review and reject the state Tax Court's rulings and remand the matter to the Tax Court. Contrary to his contention, the District Court lacked jurisdiction to do so. Under the Rooker-Feldman doctrine, federal courts are deprived of subject-matter jurisdiction over claims when "(1) the federal plaintiff lost in state court; (2) the plaintiff 'complains of injuries caused by the state-court judgments'; (3) those judgments were rendered before the federal suit was filed; and (4) the plaintiff is inviting the district court to review and reject the state judgments."

Great W. Mining & Min. Co. v. Fox Rothschild LLP, 615 F.3d 159, 166 (3d Cir. 2010)

(alterations omitted) (quoting Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005)). **Those elements are all present here:** Yew lost his claim in the Tax Court on the defendants' motion for summary judgment; he contends that, as a result, he cannot litigate his claim to recover the inheritance-tax refund he sought; the state court's rulings were rendered before Yew commenced this federal action; and Yew invited the District Court to review and reject those rulings. Thus, the District Court lacked jurisdiction over his claims.²

We will therefore **affirm** the District Court's judgment.

² Under these circumstances, amendment would have been futile. See Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002).

APPENDIX C

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

CHAMBERS OF
MADELINE COX ARLEO
UNITED STATES DISTRICT JUDGE

MARTIN LUTHER KING
COURTHOUSE 50 WALNUT ST.
ROOM 4066 NEWARK, NJ 07101
973-297-4903

October 18, 2023

VIA MAIL

Tony Ping Yew
36 Franko Ave,
Piscataway, New Jersey 08854

VIA ECF

All Counsel of Record

LETTER ORDER

23-2069

Re: Yew v. Attorney General State of New Jersey, et. al.

Civil Action No.

Dear Litigants:

Before the Court is Defendants Attorney General of the State of New Jersey (the "Attorney General"), and the Honorable Mary Siobhan Brennan's ("Judge Brennan" and together with the Attorney General, the "Defendants") Motion to Dismiss pro se Plaintiff Tony Ping Yew's (the "Plaintiff")

Complaint. ECF No. 6. For the reasons explained below, Defendants' Motion to Dismiss is GRANTED.

Pro se Plaintiff Tony Ping Yew, as executor for the estate of John Y. Wei, **brings this action against Judge Brennan and the Attorney General** alleging violations of his rights under the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment. See ECF No. 1 (the "Complaint"). Plaintiff specifically alleges that he filed a claim in the New Jersey State Tax Court seeking a refund of inheritance tax previously paid to the State. See generally id. Judge Brennan granted Summary Judgment against Plaintiff and dismissed his claim. Id. at 2. Plaintiff filed appeals from these rulings, and those appeals were also denied. Id. In the instant action, Plaintiff seeks to "vacate Judge Brennan's grant of summary judgment . . . so as to facilitate Plaintiff's right to recover the \$34,425 sought in the state Court." Id. at 3.

In their Motion to Dismiss, Defendants seek dismissal on multiple grounds including: (1) that the Complaint fails to state a claim; (2) that the claims against Judge Brennan are barred by the doctrine of Judicial Immunity; (3) the claims against the Defendants are barred by the Eleventh

CLOSING

Amendment; (4) the Defendants are not "persons" under Section 1983; and (5) the claims are barred by the Rooker Feldman doctrine. See ECF No. 6 at 2-3.

It is well-settled that the doctrine of judicial immunity bars claims against a judge who acts within her judicial capacity and within her jurisdiction, even when her actions are erroneous, malicious, or in excess of her authority. See *Gallas v. Supreme Court of Pennsylvania*, 211 F. 3d 760, 769-70 (3d Cir. 2000). Here, Plaintiff's claims are based solely on his disagreement with Judge Brennan's grant of summary judgment against him in New Jersey State Tax Court. See Compl. at 2. Such allegations fall squarely within the doctrine of judicial immunity. On this basis alone, Plaintiff's claims against Judge Brennan are dismissed.

The claims against Judge Brennan and the Attorney General are also barred by the Eleventh Amendment. The Eleventh Amendment bars suits brought in federal court by a state's own citizens, as well as citizens of another state against the State. See *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 99-101 (1984). This immunity extends to state agencies, departments, and officials, provided that they are "arms of the state." Will v. Mich. Dept of State Police, 491 U.S. 58, 70 (1989). Both Judge Brennan and the Attorney General are "arms of the State." Dongar v. Banar, 363 F. App'x 153, 156 (3d Cir. 2010); see e.g., Mosher v. New Jersey, No. 06-2526, 2007 WL 1101230, at *2 (D.N.J. Apr. 10, 2007) (finding that state court judges sued for actions taken in their official capacity "may cloak themselves in . . . the Eleventh Amendment"); Jenkins v. Young, No. 13-2466, 2014 WL 1225372, at *5 (D.N.J. Mar. 24, 2014) (dismissing claims against former New Jersey Attorney General under the Eleventh

Amendment). Plaintiff's claims against both Judge Brennan and the Attorney General are therefore dismissed under the Eleventh Amendment.¹

Accordingly, Defendants' Motion to Dismiss, ECF No. 6, is GRANTED. Pro se Plaintiff's Complaint is DISMISSED with prejudice as further amendment would be futile. This matter is hereby CLOSED.

SO ORDERED.

/s Madeline Cox Arleo
MADELINE COX ARLEO
UNITED STATES DISTRICT JUDGE

¹ Because this Court finds that Plaintiff's claims are barred by Judicial Immunity and the Eleventh Amendment, it does not reach the other grounds for dismissal raised by Defendants

APPENDIX D

GURBIR S. GREWAL ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 106
Trenton, New Jersey 08625
By: Miles Eckardt
Deputy Attorney General NJ
Attorney ID #256402017
(609) 376-2889
Attorney for Defendant,
Director New Jersey Division of Taxation

TAX COURT OF NEW JERSEY
DOCKET NO. 008858-2019
CIVIL ACTION

TONY PING YEW,
PLAINTIFF,

V.

DIRECTOR, DIVISION OF TAXATION,
DEFENDANT.

ORDER AND FINAL
JUDGMENT GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AND
DISMISSING THE
COMPLAINT
(WITH PREJUDICE)

This matter, having been presented to the Court by Gurbir S. Grewal, Attorney General of New Jersey (Miles Eckardt, Deputy Attorney General, appearing), on behalf of Defendant, Director, Division of Taxation ("Director"), and by way of notice of motion for summary judgment to the Plaintiff (Tony Ping Yew, a self-represented party); and the Court having considered the papers submitted in support thereof and any in opposition thereto, and the Court having heard oral argument, and for good cause shown:

IT IS on this 19th day of June 2020

ORDERED that, for the reasons placed on the record on June 19, 2020, Defendant's Motion for Summary Judgment be and hereby is GRANTED; and

IT IS FURTHER ORDERED that Plaintiff's Cross-Motion for Summary Judgment be and hereby is denied; and

IT IS FURTHER ORDERED that Plaintiff's Complaint is hereby dismissed, with prejudice and without costs, damages, fees, or other relief, and Plaintiff is ordered to pay the assessed tax, and interest (computed to the date of payment).

IT IS FURTHER ORDERED that Defendant shall serve a copy of this Order and Final Judgment on the Plaintiff within 7 days of the entry hereof.

Mary Siobhan Brennan

Mary Siobhan Brennan, J.T.C.

In accordance with the required statement pursuant to R. 1:6- 2(a), this motion was
[x] opposed [] unopposed.

In accordance with the required statement pursuant to R. 8:9-1, this order is a final
judgment from which the time to file an appeal shall begin to run: Yes [x] No [].

TAX COURT OF NEW JERSEY
MERCER COUNTY, NEW JERSEY
DOCKET NOS. 008858-2019
A.D. #_____

TRANSCRIPT
OF
MOTION FOR
SUMMARY JUDGMENT

TONY PING YEW,

Plaintiff,

v.

DIRECTOR, DIVISION OF TAXATION,

Defendant.

Place: 210 South Broad Street
Trenton, NJ 08608

Date: June 19, 2020

BEFORE:

THE HON. MARY SIOBHAN BRENNAN, J.T.C.

TRANSCRIPT ORDERED BY:

TONY PING YEW
36 FRANKO AVENUE
PISCATAWAY, NJ 08854

TELEPHONIC APPEARANCES:

TONY PING YEW, Plaintiff, Pro se

MILES ECKARDT, ESQ. (DiFrancesco Bateman Kunzman, Davis Lehrer & Flaum, P.C.)

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Audio Operator, Alexa DeAngelis

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pissed off that they get (indiscernible) that easily and, hey, you know, I do this for my grandfather or (indiscernible), you know. It's not just a money thing anymore. (Indiscernible) end of the world --

THE COURT: Okay. Mr. Ping, I understand your disappointment, but I think we're going around in circles, so I'm **going to sign the order granting the summary judgment motion of the Division. I'm going to sign the order denying your summary judgment motion** and as I said, if you choose, you can file an appeal and you can bring that argument to the Appellate Division. Okay?

MR. YEW: Right.

THE COURT: All right. DAG Eckardt, anything else?

MR. ECKARDT: Judge, the only thing I wanted to address was a three-parent issue, if maybe you'll be writing an opinion. If not, and this is from the bench then, I don't need to weigh in.

THE COURT: Well you may want to weigh in only because if I'm not going to write an opinion. This is from the bench, however, if Mr. Ping chooses to file an appeal, there will be an amplification letter. So rather than put the Appellate Division in a situation where they would have liked to have heard

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factor is the testimony of Anthony under oath, who is not a child. He is an adult. His testimony is that he did not consider John to be a parent. He considered you and Mary to be his parents and he had a loving relationship with John that he characterized as a grandparent.

So I will have the order signed and uploaded today. Do we have Ping's e-mail address. We will email it to you, Mr. Ping, as well as send it through the Postal Service. These days with the Corona virus the Postal Service is quite slow, but it will be signed, e-mailed to you, uploaded on the eCourts system and sent to you regular mail.

I thank you all. I'm sorry that you're disappointed, Mr. Ping, but you both did a very good job, you both did a very good job of presenting, you know, the case and the arguments and we'll see where we go from here. Okay.

Thank you.

MR. YEW: Okay.

MR. ECKARDT: Thank you, Judge.

MR. YEW: Yeah (indiscernible).

* * * * *

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C E R T I F I C A T I O N

I, ANNEMARIE DeANGELO, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on compact disc, play back number 12:19:26 to 1:42:38, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded, and to the best of my ability.

/s/ Annemarie DeAngelo

ANNEMARIE DeANGELO AOC # 636

J&J COURT TRANSCRIBERS, INC. DATE: June 30, 2020

APPENDIX E

MARY SIOBHAN BRENNAN

JUDGE

Via eCourts, Email, & Mail:

Tony Ping Yew

36 Franko Avenue

Piscataway, NJ 08854

Via eCourts & Email:

Miles Eckardt

TAX COURT OF NEW JERSEY

THE TAX

*SEAL OF

RT OF NEW

July 9, 2020

210 South Broad Street

Fifth Floor

Trenton, New Jersey 08608

609 815-2922, Ext. 54560 Fax: 609 815-3079

DAG, Division of Taxation

25 Market Street

P.O. Box 106

Trenton, New Jersey 08625-1006

RE:

Dear Mr. Yew,

TONY PING YEW EXECUTOR OF ESTATE OF JOHN Y. WEI v. DIRECTOR,

DIVISION OF TAXATION

DOCKET NUMBER: 008858-2019

The court is in receipt of your **motion for reconsideration**.

Unfortunately, when your complaint was originally filed, the court **inadvertantly** did not advise you that the court rules prohibit the executor of an estate to litigate matters without legal representation.

Specifically, as the executor you cannot litigate on behalf of the estate of John Y. Wei without an attorney. See R. 1:21-1; see also Kasharian v. Wilentz, 93 N.J. Super 479, 482-83 (App. Div. 1967); Santander Bank, N.A. v. Dzincielewski, No. A-2178-17T3,

2019 LEXIS 1677, at *6 (App. Div. July 24, 2019).¹

1 A copy of R. 1:21-1 and Santander Bank, N.A. v. Dzincielewski, No. A-2178-17T3, 2019 LEXIS 1677 (App. Div. July 24, 2019) are attached to this letter.

Interpreter

ADA

Americans with Disabilities Act

ENSURING AN OPEN DOOR TO JUSTICE

bg

If you wish to proceed with the motion for reconsideration, you must first retain the services of an attorney and have counsel enter an appearance with the court. *Therefore the motion for reconsideration is adjourned to August 21, 2020 to give you the opportunity to retain counsel.*

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/s/ Mary Siobhan Brennan, J.T.C.

APPENDIX F

TAX COURT OF NEW JERSEY
MARY SIOBHAN BRENNAN
JUDGE

February 7, 2022
495 Martin Luther King Blvd., Fourth Floor
Newark, New Jersey 07102
609 815-2922, Ext. 54560
Fax: 609 815-3079

Re: TONY PING YEW EXECUTOR OF ESTATE OF JOHN Y. WEI V. DIRECTOR,
DIVISION OF TAXATION, Doc. No. 008858-2019

Dear Mr. Yew,

Please be advised that the court is in receipt of your **motion to disqualify** Judge Brennan *from ruling on the motion for reconsideration*. As mentioned in the court's correspondences dated July 9, 2020 and July 23, 2020, pursuant to New Jersey Court Rule 1:21-1, as executor of the estate you cannot litigate on behalf of John Y. Wei's estate without an attorney. The relevant section of the statute is inserted below for your convenience:

With respect to pro se appearances, this rule permits such appearances only by the real party in interest and thus prohibits such appearances by non-lawyer fiduciaries

where the action involves another's beneficial interests.

[R, 1:21-1.]

This rule is further explained in Kasharian v. Wilentz, 93 N.J. Super 479 (App. Div. 1967). ***To proceed with the motion for reconsideration or your motion to disqualify Judge Brennan from ruling on the motion for reconsideration, you must retain an attorney*** and the attorney must enter an appearance with the court. Therefore, the case remains closed.

Regards,
Lauren
Lauren Boix (She/Her)
Law Clerk to the Hon. Mary Siobhan Brennan, J.T.C.
Tax Court of New Jersey
Essex County Dr. Martin Luther King Jr., Justice Building
495 Martin Luther King Blvd., Fourth Floor
Newark, NJ 07102-0690
(609)-815-2922 Ext. 54560
Lauren.Boix@njcourts.gov

APPENDIX G

* * * * *

"A remand is the first step on the road to recover the \$34,425 inheritance tax **already paid** to the State Of New Jersey." *See Document*: 10 Page: 20. Also, *see Appendix 3* Page 19 of 26 PageID: 19. ¶ 2; *Appendix 4* Page 1 to 3 PageID: 81-83. This \$34,425 inheritance tax **already paid** to the State Of New Jersey which Petitioner-Appellant sought to recover is the injury that precedes the state court action. *Crane v. Crane*, 23cv01527 (EP), at *6 (D.N.J. Mar. 12, 2024) ("([A] party is not complaining of an injury 'caused by' a state-court judgment when the exact injury of which the party complains in federal court existed prior in time to the state-court proceedings, and so could not have been 'caused by' those proceedings.")"). This injury happened way before Petitioner-Appellant filed his lawsuit. The **timing** of Petitioner-Appellant injury occurred before he filed his state court action. His injury was not caused by the state court judgment, but by the Division of Taxation. The **source** of Petitioner-Appellant injury is the Division of Taxation for her refusal to refund the prepaid inheritance tax, not the state court judgment. *Denying refund of the prepaid inheritance tax is injury caused by the Division Of Taxation to Petitioner-Appellant.* Petitioner-Appellant allege the Division Of Taxation wrongly classified beneficiary Anthony Hui Yew as Class D instead of Class A that compelled him to prepay the inheritance tax. *See Appendix 4* Page 3 to 3 PageID: 83. The injury is this prepayment will

never be returned to him if this Court do not step in to consider this matter for remand. This injury is concrete and particularized and *actual harm had occurred to Petitioner-Appellant since the prepaid inheritance tax is still not refunded to him. Since this injury was caused by the Division Of Taxation failure to refund and not by the state court judgment, element (2) injury was not satisfied to invoke Rooker-Feldman.*

* * * * *

APPENDIX H

* * * * *

V. Reliefs:

The relief sought are **vacate** judge Brennan grant of summary judgment; **vacate** Denied Motion To Recuse judge Brennan, and **permit Plaintiff to continue his suit as Unrepresented Executor of Estate of John Y Wei in the State court so as to facilitate Plaintiff right to recover the \$34,425 sought in the state court.**

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 10th day of April, 2023.

/s/ Tony Ping Yew

TONY PING YEW, EXECUTOR OF ESTATE OF JOHN Y WEI,

36 FRANKO AVE, PISCATAWAY NEW JERSEY 08854

Tel 732-752-2024 Email: pingtony@gmail.com

summary judgment rule. The court observed the material facts exist in this case which should throw doubt into the validity of Hart as basis to grant summary judgment. The benefit of the doubt should favor non movant Plaintiff. Material issues exist that should not permit judge Brennan and the Tax Division to rely on Hart to dismiss by summary judgment. *Judge Brennan violation of Rule 56(a) require her order to be vacated.*

POINT II VIOLATIONS OF PROCEDURAL DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAWS REQUIRE DENIED MOTION TO RECUSE JUDGE BRENNAN TO BE VACATED.

I. MOTION FOR RECUSAL A judge shall recuse himself “in any proceeding in which his impartiality might reasonably be questioned,” 28 U.S.C. § 455(a), as well as in any proceeding “[w]here he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding,” id. § 455(b)(1). “[R]ecusal motions are committed to the sound discretion of the district court.” United States v. Lovaglia, 954 F.2d 811, 815 (2d Cir. 1992). “In deciding whether to recuse, a judge considers whether ‘a reasonable person, knowing all the facts, would conclude that the trial judge’s impartiality could reasonably be questioned.’” Abreu v. Brown, 2017 WL 922127, at *3 (W.D.N.Y. Mar. 7, 2017) (alterations omitted) (quoting Lovaglia, 954 F.2d at 815).
Drinks-Bruder v. Niagara Falls Police Club, No. 22-CV-268-LJV, at *11

(W.D.N.Y. Feb. 16, 2023)

* * * * *

Plaintiff was not accorded genuine Procedural Due Process of Law, only an appearance thereof. Judge Brennan reasoning is designed to protect herself rather than making a fair ruling. Plaintiff have met the burden to justify judge Brennan disqualification. Plaintiff seek this Court intervention to **remand with a substitute judge to take over this case.**

* * * * *

APPENDIX J

* * * * *

III. THIS COMPLAINT SHOULD BE REMANDED FOR REDETERMINATION DUE TO FED. R. CIV. R 60(B) FED. R. CIV. P. 56A; AND FEDERAL STATUTE 28 U.S.C. § 455(A)VIOLATIONS.

“Redetermination of issues is warranted if there is reason to doubt the quality, extensiveness, or fairness of procedures followed in prior litigation.” *Montana v. United States*, 440 U.S. 147, 164 n.11 (1979).

Arguments for Fed. R. Civ. P. 56a; and Federal Statute 28 U.S.C. § 455(a) violations were all made in the District Court. See Appendix 3;4. The District Court have original subject matter jurisdiction to rule on Federal Court Rules and Statute. There was a lack of fairness of procedures followed in the prior state court litigation. Arguments below justify basis for **remand**.

* * * * *