

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN DATTALA,  
Appellant,  
vs.  
PRECISION ASSETS; ACRY  
DEVELOPMENT LLC; AND WFG  
NATIONAL TITLE INSURANCE  
COMPANY,  
Respondents.

No. 84762

**FILED**

JUN 16 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER DENYING REHEARING*

Appellant John Dattala has petitioned for rehearing of our April 21, 2023, Order of Affirmance wherein we affirmed the district court's summary judgment in favor of respondent WFG National Title Insurance Company.<sup>1</sup> Dattala contends that we incorrectly stated that a default judgment entered against nonparties Eustachius Bursey and Lillian Medina did not contain an NRCP 54(b) certification.

Dattala is correct that the default judgment contained an NRCP 54(b) certification. However, we are not persuaded that our oversight in this respect warrants rehearing. *See* NRAP 40(c)(2) (setting forth the standard for when rehearing is warranted, which includes when the court "overlooked or misapprehended a *material* fact in the record or a material question of law in the case" (emphasis added)). Namely, Dattala's

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<sup>1</sup>Dattala's rehearing petition also raises arguments with respect to our affirmance of the summary judgment in favor of respondents Precision Assets and Acry Development. Those arguments do not warrant discussion because they were not raised in Dattala's appellate briefing. *See* NRAP 40(c)(1) ("[N]o point may be raised for the first time on rehearing.").

argument on appeal was that a factual finding of agency in the default judgment was binding on WFG and that, if WFG wanted to challenge that finding, it should have appealed from the default judgment. However, the default judgment was not entered against WFG, so it would have lacked standing to appeal that judgment.<sup>2</sup> See *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994) (recognizing that to have standing to appeal a judgment, a party must have a personal or property right that is adversely affected by the judgment).

Moreover, even if WFG had standing, Dattala does not meaningfully dispute that the district court had already orally granted summary judgment for WFG and indicated to WFG's counsel at the outset of the October 15, 2021, prove-up hearing that WFG's interests would not be impacted by any issues adjudicated at that hearing. We are unaware of any authority that would have required WFG under these circumstances to challenge the factual finding in the default judgment in order to avoid being bound by it. Cf. *Mrs. Condies Salad Co. v. Colo. Blue Ribbon Foods, LLC*, No. 11-cv-02118-KLM, 2012 WL 5354848, at \*5-6 (D. Colo. Oct. 30, 2012) (compiling case law that has recognized that "findings and conclusions in a default judgment are not binding as 'law of the case' against other defendants who are not in default"). Thus, while we acknowledge overlooking the fact that the default judgment contained an NRCP 54(b) certification, we are not persuaded that this fact was material to our

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<sup>2</sup>While we recognize that the default judgment contained a finding that WFG was liable for Medina's negligence under the doctrine of respondeat superior, the actual judgment was entered against only Medina and Bursey.

resolution of the appeal. We therefore deny Dattala's rehearing petition.  
NRAP 40(c).

It is so ORDERED.

Stiglich, C.J.  
Stiglich

Pfe, J.  
Lee

Bell, J.  
Bell

cc: Hon. Adriana Escobar, District Judge  
Benjamin B. Childs  
Claggett & Sykes Law Firm  
Wright, Finlay & Zak, LLP/Las Vegas  
Law Offices of John Benedict  
The Ball Law Group LLC  
Eighth District Court Clerk