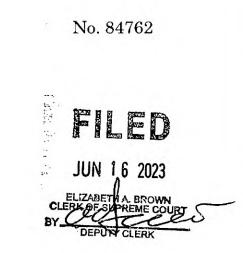
## IN THE SUPREME COURT OF THE STATE OF NEVADA

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



23-19155

## 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

<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.").

SUPREME COURT OF NEVADA 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

<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.

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

It is so ORDERED.

C.J. Stiglich , J. J. Lee

 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

SUPREME COURT OF NEVADA