

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN DATTALA,

Appellant,

vs.

PRECISION ASSETS; ACRY
DEVELOPMENT LLC; WFG
NATIONAL TITLE INSURANCE
COMPANY,

Respondents.

SUPREME COURT NO.: 84762

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Clerk of Supreme Court

From the Eighth Judicial District Court, Clark County
District Court Case No.: **A-19-794335-C**

**WFG NATIONAL TITLE INSURANCE COMPANY'S OPPOSITION TO
APPELLANT JOHN DATTALA'S MOTION FOR LEAVE TO
SUPPLEMENT THE RECORD**

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MEMORANDUM OF POINTS AND AUTHORITIES

Appellant John Dattala (“Dattala”) moves the Court for leave to supplement the record with two articles published in the Las Vegas Review Journal (“LVRJ”) website on July 13, 2023 (“Motion”). Respondent WFG National Title Insurance Company (“WFG”) opposes this Motion for the following reasons and requests that the Court deny Dattala’s procedurally and substantively improper request.

First, Dattala’s Motion is devoid of any legal authority to support the relief it seeks and, therefore, violates NRAP 27(a)(2) (“A motion must state with particularity the grounds for the motion, the relief sought, and the **legal argument necessary to support it**. The motion shall contain or be accompanied by any matter required by a specific provision of these Rules governing such a motion.”) (emphasis added). Dattala does not cite to any applicable Rule of Appellate Procedure permitting him to seek leave to supplement the record at this late juncture (i.e. after judgment was entered against him by the district court, this Court affirmed said judgment, and this Court already denied Dattala’s Petition for Rehearing). Nor does Dattala cite any legal authority permitting him to supplement the record with news articles or permitting this Court to consider such online articles. Accordingly, this Court should summarily deny the Motion. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that appellate courts need not address issues that are not

supported by cogent argument or relevant legal authority); *see also Vres v. Co. Classic*, 2023 WL 3335396, 528 P.3d 597 (May 9, 2023) (denying motion which lacked any legal or statutory precedent in support).

Second, Dattala uses his Motion as an improper attempt to reargue points that the district court and this Court have previously rejected. *See* Order of Affirmance, filed on April 21, 2023, rejecting Dattala's challenge that Lillian Medina was WFG's agent and that summary judgment in favor of WFG was precluded by the "findings" in the Default Judgment against Bursey and Medina. *See also* Order Denying Rehearing, filed on June 16, 2023, confirming that WFG obtained assurance from the district court that the Default Judgment against Bursey and Medina would not impact WFG's interests, and rejecting Dattala's challenge that WFG was required to appeal from the Default Judgment.

Third, Dattala includes a heading that states "Dattala's Public Policy Argument." *See* Motion at p.3. However, no such public policy argument is actually included in the Motion. It is assumed by WFG that Dattala threw in this reference to "public policy" to relate the two LVRJ articles to his pending Petition for En Banc Reconsideration, filed on June 29, 2023.¹ However, this Motion suffers from

¹ NRAP 40A(a) expressly states that en banc reconsideration is not favored and is only permitted "when (1) reconsideration by the full court is necessary to secure or maintain uniformity of decisions of the Supreme Court or Court of Appeals, or (2) the proceeding involves a substantial precedential, constitutional or public policy issue."

the same fatal defect as the Petition; neither actually includes any public policy argument and instead advocates a position that is contrary to longstanding Nevada public policy that claims should be resolved on their merits.² Rather, Dattala uses the Motion and Petition to improperly renew his argument that WFG should be held accountable for the acts of an alleged agent that are not supported by the record and have been repeatedly rejected by the district court and this Court. In fact, Dattala goes so far as to try to sway this Court by repeatedly referring *only* to the default judgment against Bursey and Medina and intentionally ignoring the district court's summary judgment findings of fact and conclusions of law in favor of WFG which expressly contradict the self-serving statements written in the default judgment by Bursey's counsel.³

² See *LoMastro v. Am. Family Ins. Grp. (Estate of LoMastro)*, 124 Nev. 1060, 1067, 195 P.3d 339, 344-45 (2008) (facts actually litigated should generally trump facts established by default based on non-participation of a party). The *LoMastro* ruling comports with the Nevada Supreme Court's preference and our state's public policy for deciding cases on the merits. See, e.g., *Hansen v. Universal Health Servs., Inc.*, 112 Nev. 1245, 1247-48, 924 P.2d 1345, 1346 (1996) (citing *Price v. Dunn*, 106 Nev. 100, 105, 787 P.2d 785, 787 (1990); *Hotel Last Frontier v. Frontier Prop.*, 79 Nev. 150, 155, 380 P.2d 293, 295 (1963)); see also *Stoecklein v. Johnson Elec., Inc.*, 109 Nev. 268, 271, 849 P.2d 305, 308 (1993) ("[T]he district court must consider the state's underlying basic policy of deciding a case on the merits whenever possible.").

³ See Order of Affirmance, filed on April 21, 2023 at fn.2 and fn. 4, acknowledging that the default judgment against Bursey was drafted by Dattala's counsel and that the purported "findings" in the default judgment "were simply copied from the allegations in Dattala's operative complaint."

Lastly, even if this Court were to consider the merits of Dattala's Motion, it nonetheless fails as the two LVRJ articles have no bearing on this action. Although one article references Ashley Dickerson, branch manager and escrow officer for WFG, the articles are nonetheless not relevant to this action. They do not concern the subject property, Dattala, Bursey, Precision or WFG as it pertains to the challenged sale transaction. More importantly, the articles concern scams involving seller impersonation fraud to unlawfully obtain sale proceeds from an unsuspecting buyer. *See* Motion at Exhibits 1 and 2. This appeal does not involve any such allegations of seller impersonation fraud; therefore, these articles have no relevance to this appeal. Dattala's only motivation to supplement the record here appears to be an improper attempt to prejudice this Court against WFG and impute the bad acts of unknown persons discussed in these articles to WFG.

For each of these reasons, WFG respectfully requests that the Court deny Dattala's Motion for Leave to Supplement the Record.

DATED this 20th day of July, 2023.

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CERTIFICATE OF SERVICE

I certify that I electronically filed on the 20th day of July, 2023, the foregoing **WFG NATIONAL TITLE INSURANCE COMPANY'S OPPOSITION TO APPELLANT JOHN DATTALA'S MOTION FOR LEAVE TO SUPPLEMENT THE RECORD** with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF system. I further certify that all parties of record to this appeal were served with a true and correct copy via the following means:

[] By placing a true copy enclosed in sealed envelope(s) addressed as follows:

[X] (By Electronic Service) Pursuant to CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF systems sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's CM/ECF system.

John Benedict
Benjamin Childs
David Snyder
Zachary Ball
Micah Echols
Charles Finlayson

[X] (Nevada) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

/s/ Tonya Sessions
An Employee of WRIGHT, FINLAY & ZAK, LLP