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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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IN RE:	
DINO J. PETRONE and CONNIE L. PETRONE,	
Debtor(s),	
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U.S. BANK, N.A. and PHH MORTGAGE SERVICES	
Appellant(s)	
v.	
SFR INVESTMENTS POOL 1, LLC,	
Appellee(s).	

BK-09-32084-led  
Chapter 7  
Appeal Ref 16-55

Case No. 2:16-CV-2885 JCM (JCM)

ORDER

Presently before the court is appellee SFR Investments Pool 1, LLC’s (“SFR”) motion to dismiss. (ECF No. 10). Also before the court is appellee’s motion to stay. (ECF No. 11). Appellants U.S. Bank, N.A. (“U.S. Bank”) and PHH Mortgage Services (“PHH”) filed an objection to both motions, (ECF No. 14), to which appellee replied. (ECF No. 15).

**I. Background**

The instant appeal is from a bankruptcy order that retroactively annulled an automatic stay. On November 23, 2009, Dino Petrone and Connie Petrone (“debtors”) filed a voluntary bankruptcy petition under Chapter 7, case number 09-32084-lbr. (ECF No. 6 at 8). Among the property listed in debtors’ schedules was property commonly known as 5670 San Florentine Avenue, Las Vegas, Nevada 89141 (“the property”). (Id. at 7–8.)

On December 8, 2009, PHH sought relief from the automatic stay as applied to the property. (Id. at 8). The court granted PHH’s motion for relief on February 19, 2010. (Id.). The

James C. Mahan  
U.S. District Judge

1 relief from the automatic stay applied to PHH, and did not apply to other parties possessing an  
2 interest in the property. (ECF No. 1 at 7).

3 On March 5, 2010, 14 days after the court granted PHH’s motion for relief, Southern  
4 Highlands Community Association (“HOA”) recorded a notice of delinquent assessment lien  
5 against the property through its trustee, Alessi & Koenig (“HOA trustee”). (ECF No. 6 at 9). On  
6 June 16, 2010, the HOA, through the HOA trustee, recorded a notice of default and election to sell.  
7 (Id.). On August 14, 2012, the HOA, through the HOA trustee, recorded a notice of trustee’s sale.  
8 (Id.). On September 24, 2012, the HOA trustee recorded a trustee’s deed upon sale, conveying the  
9 property to SFR pursuant to a non-judicial foreclosure sale. (Id.).

10 On March 26, 2013, SFR filed a complaint in state court against U.S. Bank, seeking to  
11 quiet title as to the property. (ECF No. 10 at 4). Sometime in 2016, U.S. Bank filed a motion for  
12 summary judgment on the basis that the HOA foreclosure sale violated the automatic stay in  
13 debtors’ bankruptcy case. (Id. at 5).

14 On September 1, 2016, SFR filed a motion in bankruptcy court to retroactively annul the  
15 automatic stay. (Id.). On December 5, 2016, the bankruptcy court entered an order granting  
16 retroactive annulment of the automatic stay as applied to the HOA’s notice of delinquent  
17 assessment lien against the property. (ECF No. 1 at 3–11). U.S. Bank and PHH timely appealed  
18 the order. (Id. at 1). Neither the debtors nor the bankruptcy trustee appealed the bankruptcy court’s  
19 order. (ECF No. 10 at 5).

20 On July 25, 2017, appellee filed a motion to dismiss U.S. Bank and PHH’s appeal of the  
21 bankruptcy court order. (ECF No. 10).

## 22 **II. Legal Standard**

23 Jurisdiction over an appeal from an order of a bankruptcy court is governed by 28 U.S.C.  
24 § 158. *In re Rains*, 428 F.3d 893, 900 (9th Cir. 2005). A district court has jurisdiction to hear  
25 appeals from “final judgments, orders, and decrees . . . and, with leave of the court, from  
26 interlocutory orders and decrees, of bankruptcy judges.” 28 U.S.C. § 158(a); *In re Rains*, 428 F.3d  
27 at 900.

1           “Only those persons who are directly and adversely affected pecuniarily by an order of the  
2 bankruptcy court have been held to have standing to appeal that order.” *Fondiller v. Robertson*  
3 (In re *Fondiller*), 707 F.2d 441, 442 (9th Cir. 1983). In *Tilley v. Vucurevich* (In re *Pecan Groves*  
4 of Ariz.), 951 F.2d 242 (9th Cir. 1991), the court held that “a creditor has no standing to appeal an  
5 adverse decision regarding a violation of the automatic stay.” *Id.* at 245. The court further held  
6 that lienholders “[do] not have standing in a bankruptcy proceeding to challenge actions as  
7 violative of the stay.” *Id.*

### 8       **III. Discussion**

9           In its motion to dismiss, appellee claims that appellants lack standing to appeal pursuant to  
10 In re *Pecan Groves*. (ECF No. 10 at 6). Appellants argue that In re *Pecan Groves* is  
11 distinguishable on its facts, is premised on outdated law, and has been sharply criticized by other  
12 courts. (ECF No. 14).

13           Appellants lack standing to appeal the order of the bankruptcy court. As related to the  
14 bankruptcy of Dino and Connie Petrone, U.S. Bank and PHH were creditors of the estate who held  
15 a lien against the property. Neither the trustee nor the debtors appealed the bankruptcy court’s  
16 order. (ECF No. 10 at 5). This court is bound by the Ninth Circuit’s decision in In re *Pecan*  
17 *Groves*. 951 F.2d at 245. As creditors with a lien against property of the estate, U.S. Bank and  
18 PHH lack standing to challenge the bankruptcy order. See *id.*

19           Appellants’ arguments against the application of In re *Pecan Groves* to the instant appeal  
20 are unpersuasive. Appellant correctly asserts that In re *Pecan Groves* was decided before the Ninth  
21 Circuit held in In re *Schwartz*, 954 F.2d 569 (9th Cir. 1992), that acts in violation of the stay were  
22 void ab initio. *Id.* at 571. However, appellants fail to persuade the court that the holding in In re  
23 *Schwartz* makes the instant appeal legally distinguishable from In re *Pecan Groves*. Here,  
24 similarly to In re *Pecan Groves*, a creditor is appealing a bankruptcy court order relating to the  
25 automatic stay on debtors’ property that neither the debtors nor the trustee appealed. The rule  
26 articulated in In re *Pecan Groves*, that creditors cannot appeal an adverse decision of the  
27 bankruptcy court related to the automatic stay, governs this case. 951 F.2d at 245.

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**IV. Conclusion**


Appellants, as creditors who possessed a lien against property of the bankruptcy estate, lack standing to appeal the judgment of the bankruptcy court that retroactively annulled the automatic stay.

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that appellee's motion to dismiss the appeal (ECF No. 10), be, and the same hereby is, GRANTED.

IT IS FURTHER ORDERED that appellee's motion to stay the appeal (ECF No. 11), be, and the same hereby is, DENIED as moot.

DATED August 24, 2017.

  
UNITED STATES DISTRICT JUDGE