

Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
September 08, 2022

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

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<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>In re: ) HARTLAND MMI, LLC, ) Debtor. ) HARTLAND MMI, LLC, a Nevada limited ) liability company, ) Plaintiff, ) v. ) MANNING AUCTIONS LLC, a Nevada ) limited liability company dba LUXEA ) GLOBAL; JEFFREY P. MANNING, an ) individual, ) Defendants. ) MANNING AUCTIONS LLC, a Nevada ) limited liability company dba LUXEA ) GLOBAL; JEFFREY P. MANNING, an ) individual, ) Counter-Claimants, ) v. ) HARTLAND MMI, LLC, a Nevada limited ) liability company; HARTLAND MMI ) SERIES I LLC OF THE HARTLAND MMI ) LLC; HARTLAND MMI SERIES II LLC ) OF THE HARTLAND MMI LLC, ) Counter-Defendants. )</p>	<p>Case No.: 20-12409-MKN Chapter 11 Adv. Proc. No.: 20-01090-MKN Date: July 20, 2022 Time: 9:30 a.m.</p>
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1 **ORDER ON MOTION FOR SUMMARY JUDGMENT AS TO DEBTOR HARTLAND**  
2 **MMI, LLC’S CLAIMS AGAINST DEFENDANTS MANNING AUCTIONS, LLC dba**  
3 **LUXEA GLOBAL AND JEFFREY P. MANNING<sup>1</sup>**

4 On July 20, 2022, the court heard the Motion for Summary Judgment as to Debtor  
5 Hartland MMI, LLC’s Claims Against Defendants Manning Auctions, LLC dba Luxea Global  
6 and Jeffrey P. Manning (“Manning MSJ”) brought by defendants and counterclaimants Manning  
7 Auctions LLC dba Luxea Global, and Jeffrey P. Manning (collectively, “Manning”). The  
8 appearances of counsel were noted on the record. After arguments were presented, the matter  
9 was taken under submission.

10 **BACKGROUND<sup>2</sup>**

11 On April 16, 2014, a proceeding to probate a holographic will was commenced in the  
12 probate department of the Eighth Judicial District Court, Clark County, Nevada (“Probate  
13 Court”), styled as In the Matter of the Estate of Ailene E. Hart, aka, Toni Hart, Deceased, Case  
14 No. P-14-080879-E (“Probate Matter”).<sup>3</sup> One of the assets of the decedent’s estate (“Probate  
15 Estate”) consisted of the decedent’s interest in a Nevada limited liability company known as  
16 Hartland MMI, LLC (“Hartland” or “Debtor”).<sup>4</sup> The primary asset of the Debtor consisted of

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17 <sup>1</sup> In this Order, all references to “ECF No.” are to the number assigned to the documents  
18 filed in the above-captioned bankruptcy case as they appear on the docket maintained by the  
19 clerk of court. All references of “AECF No.” are to the documents filed in the above-captioned  
20 adversary proceeding. All references to “Section” or “§§ 101-1532” are to the provisions of the  
21 Bankruptcy Code. All references to “FRE” are to the Federal Rules of Evidence. All references  
to “Bankruptcy Rule” shall be to the Federal Rules of Bankruptcy Procedure. All references to  
“Civil Rule” shall be to the Federal Rules of Civil Procedure. All references to “NRS” are to the  
Nevada Revised Statutes.

22 <sup>2</sup> Pursuant to FRE 201(b), the court takes judicial notice of all materials appearing on the  
23 docket in the above-captioned adversary proceeding and the above-captioned Bankruptcy Case  
24 See U.S. v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980); see also Bank of Am., N.A. v. CD-04,  
25 Inc. (In re Owner Mgmt. Serv., LLC Trustee Corps.), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015)  
 (“The Court may consider the records in this case, the underlying bankruptcy case and public  
records.”).

26 <sup>3</sup> All references to “Probate ECF No.” are to the numbers assigned to the documents filed  
27 in the Probate Matter.

28 <sup>4</sup> The petition to commence the probate proceeding was filed by Larry D. Hart, Linda S.  
Hart, and Garry L. Hart. All three petitioners were appointed as the co-personal representatives

1 real property located at 1040 S. Sixth Street, Las Vegas, Nevada, commonly known as the  
2 Hartland Mansion.

3 On or about February 25, 2015, the Probate Court conducted a hearing concerning a  
4 report of the probate commissioner. Thereafter, the Probate Court's oral rulings were  
5 memorialized in an "Order From February 25, 2015" that was entered on or about March 31,  
6 2015 ("Probate 2015 Order"). Among other things, the Probate Court found "that Hartland  
7 MMI, LLC is a separate legal entity, and that as Manager of the LLC, Larry Hart had the  
8 authority to borrow money on behalf of the LLC without Court approval; and that the Decedent  
9 was the sole Member of the LLC, and upon her death, her interest in the LLC became an asset of  
10 the Estate." Probate 2015 Order at 2:22-26 (emphasis added).

11 On December 5, 2016, the Probate Court entered an order providing that Garry Hart, as  
12 co-executor, would remain as the sole manager of Hartland. (Probate ECF No. 303).

13 On February 8, 2017, Hartland commenced a voluntary Chapter 11 reorganization  
14 proceeding, denominated Case No. 17-10549 ("First Chapter 11"). (First ECF No. 1). Debtor  
15 filed the Chapter 11 proceeding to prevent a pending foreclosure sale of the Hartland Mansion.  
16 Bankruptcy counsel for Hartland in the First Chapter 11 case was the Law Offices of David  
17 Winterton ("Attorney Winterton").

18 On July 26, 2018, an order was entered approving the sale of the Hartland Mansion for a  
19 gross purchase price of \$2.9 million. (First ECF No. 258). The order provided, *inter alia*, for a  
20 variety of claims secured by the property to be satisfied upon the close of the sale, as well as  
21 various amounts to be paid to other parties, including to Jeff Manning of Manning Auctions,  
22 LLC (together "Manning") and to Attorney Lueck.

23 On December 26, 2018, an order was entered granting the motion of the Office of the  
24 United States Trustee ("UST") to dismiss the First Chapter 11 proceeding. (First ECF No. 305).

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26 and executors of the probate estate. (Probate ECF No. 11). Thereafter, Linda Hart voluntarily  
27 resigned as a co-personal representative and executor. Upon her resignation, Larry Hart and  
28 Garry Hart agreed to the appointment of Larry Bertsch ("Bertsch"), certified public accountant,  
as the third co-executor to replace Linda Hart. That agreement was approved by an order of the  
Probate Court entered on September 9, 2015. (Probate ECF No. 209). Thereafter, Larry Hart  
died, leaving Garry Hart and Bertsch as the remaining co-executors of the Probate Estate.

1 On March 5, 2019, Debtor filed a civil complaint in the Eighth Judicial District, Clark  
2 County, Nevada (“State Court”), denominated Case No. A-19-790498-C (“State Action”).  
3 Debtor’s complaint sought damages against Manning, for their conduct in connection with the  
4 sale of the Hartland Mansion in the First Chapter 11.

5 On April 3, 2019, Attorney Lueck filed a motion in the Probate Matter seeking to compel  
6 Attorney Winterton to turnover to the Probate Estate certain funds held in his attorney-client trust  
7 account from the sale of the Hartland Mansion (“Lueck Turnover Motion”). (Probate ECF No.  
8 383).

9 On April 8, 2019, the First Chapter 11 proceeding was closed. (First ECF No. 308).

10 On May 2, 2019, Manning filed a petition removing the State Action to the bankruptcy  
11 court,<sup>5</sup> (First ECF No. 309), and thereafter filed a motion to reopen the First Chapter 11  
12 proceeding. (First ECF No. 311).

13 On June 24, 2019, an order was entered reopening the First Chapter 11 case. (First ECF  
14 No. 321).

15 On September 3, 2019, this court entered an order remanding the First Adversary to the  
16 State Court because, *inter alia*, the State Action asserted a claim for breach of contract governed  
17 by Nevada law. (First Adversary ECF No. 26).

18 On September 4, 2019, an order was entered re-closing the First Chapter 11 case. (First  
19 ECF No. 333).

20 On March 31, 2020, the Probate Court conducted a hearing on a variety of matters,  
21 including the Lueck Turnover Motion.<sup>6</sup> A written order memorializing the Probate Court’s  
22 determinations was entered on or about April 7, 2020 (“Lueck Turnover Order”). (Probate ECF  
23 No. 435). That Order states, in pertinent part, that “...it appearing to the court that the net  
24 remaining funds in the trust account of David Winterton, Esq. is \$382,849.96 from the sale of the

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25 <sup>5</sup> The removed State Action was denominated Adversary Proceeding No. 19-01068  
26 (“First Adversary”). (First ECF No. 309). All references to “AECF No.” are to the numbers  
27 assigned to the documents filed in the adversary proceedings opened in the bankruptcy court..

28 <sup>6</sup> See Probate Court Minutes – All Pending Motions (03/31/2020).

1 Hart Mansion in the Chapter 11 bankruptcy, that a recent accounting of the trust fund indicates  
2 that there has been some dissipation of the funds in the trust account during the time the funds  
3 have been in his trust account, and that the funds belong to the estate...” Lueck Turnover Order  
4 at 1:24 to 2:4 (emphasis added). Based on that determination, the Probate Court ordered, *inter*  
5 *alia*, “that David Winterton, Esq., shall forthwith issue a trust account check payable to the  
6 Shumway Van Trust Account in the amount of \$382,849.96 and shall forthwith remit this check  
7 to the Shumway Van law firm without deduction of any other expenses or claims....” *Id.* at 2:5-  
8 8 (emphasis added).

9 On April 17, 2020, Attorney Winterton filed a motion for partial reconsideration of the  
10 Lueck Turnover Order (“Winterton Reconsideration Motion”). (Probate ECF No. 440).

11 On May 18, 2020, Debtor commenced the instant Chapter 11 proceeding (“Second  
12 Chapter 11”). (Second ECF No. 1). The voluntary Chapter 11 petition is accompanied by the  
13 Debtor’s schedules of assets and liabilities (“Schedules”) and statement of financial affairs  
14 (“SOFA”). The Chapter 11 petition, Schedules and SOFA are signed by Garry Hart, as manager  
15 of the Debtor. Debtor’s property Schedule “A/B” lists three categories of property of the Second  
16 Chapter 11 bankruptcy estate: cash in the amount of \$382,849.96 held in the trust account of  
17 Attorney Winterton; miscellaneous office equipment and furnishings having a value of  
18 \$151,664.00; and various contingent and unliquidated claims against multiple parties, including  
19 Manning, attorneys and other professionals, and service providers having an aggregate value of  
20 \$1,536,000.00. The total current value of all assets of the Debtor is scheduled at \$2,070,513.96.  
21 Debtor’s secured creditor Schedule “D” lists Attorney Winterton as having a claim in the amount  
22 of \$30,004.18, secured by a statutory lien against the cash held in Attorney Winterton’s trust  
23 account. No other secured creditors are listed.

24 Debtor’s unsecured creditor Schedule “E/F” lists 14 claimants or notice-only parties  
25 having priority and non-priority claims totaling \$75,950.00. Debtor’s co-debtor Schedule “H”  
26 lists the Estate of Ailene Hart, the Estate of Larry David Hart, and Garry Hart as co-debtors of  
27 various obligations owed by the Debtor, with Garry Hart as the executor, co-executor, or  
28 principal of the co-debtor party. Debtor’s SOFA, at Item 11.1, discloses that its current

1 bankruptcy counsel, Johnson & Gubler, P.C. (“Johnson Firm”), was not paid a retainer before the  
2 filing of the Chapter 11 petition, but received jewelry from Garry Hart’s spouse as collateral for  
3 payment. At Item 13.1, the SOFA lists only one transfer of money or property outside of the  
4 ordinary course of business to another person within 2 years: the sale of the Hartland Mansion on  
5 September 10, 2018, for the amount of \$2.9 million. At Item 28, the SOFA lists Garry Hart and  
6 the Estate of Ailene Hart (with Garry Hart as co-executor), respectively, as the only manager and  
7 member of the Debtor. On the same date the Chapter 11 petition was filed, a notice of  
8 bankruptcy was entered (“Bankruptcy Notice”) scheduling a meeting of creditors for June 25,  
9 2020. (Second ECF No. 4).

10 On May 21, 2020, the Probate Court heard the Winterton Reconsideration Motion and  
11 orally ruled that the proceeds from the sale of Hartland Mansion were assets of the Probate  
12 Estate.

13 On June 17, 2020, the Probate Court entered a written order on the Winterton  
14 Reconsideration Motion (“Probate Reconsideration Order”). (Probate ECF No. 454). That order  
15 provides “that the net proceeds remaining in the trust account of David Winterton, Esq. as of  
16 March 26, 2020, \$382,849.96 are deemed to be an asset of the probate estate and therefore usable  
17 for payment of the administrative claims of the probate.” (Emphasis added). Probate  
18 Reconsideration Order at 2:14-17.

19 On June 17, 2020, Attorney Lueck filed a “Motion to Exclude Funds as Property of the  
20 Estate” (“Exclusion Motion”). (Second ECF No. 21). Attorney Lueck seeks entry of an order  
21 determining that the funds held by Attorney Winterton on the commencement of the Second  
22 Chapter 11 proceeding are assets of the Estate of Ailene Hart under the jurisdiction of the State  
23 Court. The Exclusion Motion was noticed to be heard on July 22, 2020, but was continued to be  
24 heard concurrently with the Dismissal Motion. (Second ECF Nos. 22 and 43).

25 On June 25, 2020, an order was entered granting the employment of the Johnson Firm as  
26 Chapter 11 counsel to represent the Debtor (“Employment Order”).<sup>7</sup> (Second ECF No. 26). The

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28 <sup>7</sup> On May 18, 2020, Debtor filed an application to employ the Johnson Firm as Chapter  
11 counsel. (Second ECF No. 5). Attached to the Application is the Declaration of Mathew

1 Employment Order provides that “of the proceeds obtained from the Law Offices of David J.  
2 Winterton post-petition, Johnson & Gubler, P.C. will hold \$15,000.00 for its retainer, plus the  
3 filing fee of \$1,717.00 in trust until further Order of this Court, and the balance shall be returned  
4 to the Debtor to be deposited inter the Debtor In Possession account.” Employment Order at  
5 2:16-19.

6 On June 26, 2020, Manning filed a motion under Section 1104(a) to appoint a Chapter 11  
7 trustee (“Trustee Motion”). (Second ECF No. 30). The Trustee Motion was noticed to be heard  
8 on August 5, 2020. (Second ECF No. 31). By stipulation, the hearing was continued to August  
9 12, 2020. (Second ECF No. 38).

10 On June 29, 2020, Attorney Lueck filed a petition in the Probate Court seeking to remove  
11 Garry Hart as a co-executor of the Probate Estate and to replace Garry Hart as the manager of  
12 Hartland (“Lueck Replacement Motion”). (Probate ECF No. 456).

13 On July 15, 2020, the Probate Court heard and orally granted the Lueck Replacement  
14 Motion. See Probate Court Minutes – Show Cause Hearing (07/15/2020).

15 On July 23, 2020, the Probate Court entered a written order memorializing its decision  
16 granting the Lueck Replacement Motion (“Lueck Replacement Order”). (Probate ECF No. 490).  
17 That Order included a number of findings, including that “the estate was the proper owner of  
18 those funds in the trust account of David Winterton,” see Lueck Replacement Order at 5:8-19  
19 (emphasis added), and that the “court has always held that the estate was the owner of the LLC  
20 and that any net income from any sale of the property would be an estate asset.” Id. at 5:12-14  
21 (emphasis added). Moreover, the Probate Court expressly ordered the removal of Garry Hart as  
22 co-executor of the Probate Estate as well as the immediate suspension of Garry Hart as manager  
23 of the Debtor. Id. at 10:13-16. The Probate Court also temporarily appointed Bertsch as sole  
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28 Johnson attesting that a retainer of \$15,000 plus \$1,717 for filing fees would be provided from  
funds held by Attorney Winterton.



1 manager of the Debtor inasmuch as there were no remaining executors of the Probate Estate. Id.  
2 at 10:16-17.<sup>8</sup>

3 On August 12, 2020, Manning filed a notice that it again had removed the State Action to  
4 this bankruptcy court (“Removal Notice”), which was assigned Adversary Proceeding No. 20-  
5 01090-mkn (“Second Adversary”). (Second AECF No. 1).

6 On August 20, 2020, an order was entered granting the Trustee Motion (“Trustee  
7 Order”). (Second ECF No. 57). On the same date, an order was entered denying the Exclusion  
8 Motion (“Exclusion Order”). (Second ECF No. 59). The Exclusion Motion was denied without  
9 prejudice in light of the appointment of a Chapter 11 trustee to investigate the acts, conduct,  
10 assets, liabilities and financial condition of the Debtor. See Exclusion Order at 1:17-21.

11 On August 31, 2020, an order was entered approving the appointment of Timothy W.  
12 Nelson (“Trustee Nelson”) as the Chapter 11 trustee in the instant case. (Second ECF No. 66).

13 On September 17, 2020, the 341 Meeting was concluded. (Second ECF No. 76).

14 On October 15, 2020, Attorney Lueck filed a Motion for Order for Disgorgement of  
15 Attorney Fees and Motion to Dismiss Chapter 11 Case (“Dismissal Motion”), along with a  
16 declaration of Robert W. Lueck. (Second ECF Nos. 81 and 82).

17 On October 19, 2020, the Dismissal Motion was noticed to be heard on November 18,  
18 2020. (Second ECF No. 83)

19 On October 23, 2020, the Johnson Firm filed its first and final interim application for  
20 compensation for services provided to the Debtor. On this same date, the Johnson Firm filed an  
21 amended first and final interim application for compensation (“Johnson Fee Application”) which  
22 was noticed to be heard on November 25, 2020. (Second ECF Nos. 86, 87 and 88).<sup>9</sup>

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25 <sup>8</sup> Among other things, Bertsch was directed to consider whether he wanted to be the full-  
26 time manager of Hartland and whether Hartland should continue to pursue the Second Adversary  
27 Proceeding against Manning. Id. at 10:18-22.

28 <sup>9</sup> By stipulation, the hearing on the Dismissal Motion was continued to December 17,  
2020. (Second ECF No. 91).



1 On October 26, 2020, the instant Manning MSJ was filed, along with a statement of  
2 undisputed facts (“SUF”). (Second AECF Nos. 5 and 6). Exhibit “A” to the Manning MSJ  
3 consists of the Declaration of Jeffrey P. Manning (“Manning Declaration”) in support of the  
4 Manning MSJ. Attached to the Manning MSJ as Exhibits “B” through “G” are copies of various  
5 documents filed in the First Chapter 11 as well as documents attached to Removal Notice.  
6 Attached as Exhibit “H” to the Manning MSJ is a Declaration of Brenoch Wirthlin, Esq.  
7 (“Wirthlin Declaration”). Attached to the SUF as Exhibits “A” through “G” are copies of the  
8 same documents that were attached to the Manning MSJ or the Removal Notice. The Manning  
9 MSJ was noticed to be heard on December 17, 2020. (Second AECF Nos. 5, 6 and 7).

10 On November 4, 2020, a stipulated order was entered continuing both the Johnson Fee  
11 Application and the Dismissal Motion to December 17, 2020, to be heard along with the  
12 Manning MSJ. (Second ECF No. 93).

13 On December 17, 2020, the Manning MSJ hearing was continued to February 10, 2021.  
14 (AECF No. 13). Additionally, the hearing on both the Johnson Fee Application and the  
15 Dismissal Motion were continued to February 10, 2021. (Second ECF Nos. 103 and 104).

16 On December 23, 2020, a global settlement conference (“Global Settlement Conference”)  
17 was scheduled for January 29, 2021, before U.S. Bankruptcy Judge Christopher Jaime, regarding  
18 the Johnson Fee Application and the Dismissal Motion. (Second ECF No. 105; Second A ECF  
19 No. 15).<sup>10</sup>

20 On January 21, 2021, Attorney Lueck filed a Petition for Writ of Mandamus before the  
21 United States District Court for the District of Nevada (“USDC”), assigned Case No. 21-cv-  
22 00114-GMN-NJK (“Mandamus Proceeding”).<sup>11</sup> (USDC ECF No. 1). Attorney Lueck sought an  
23 order from the USDC to compel this bankruptcy court to dismiss the instant Chapter 11  
24 proceeding with prejudice and to vacate all other orders entered in the case. Due to the pendency  
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26 <sup>10</sup> The Global Settlement Conference was continued several times before ultimately being  
27 vacated on June 14, 2022 (Second ECF No. 203; Second AECF No. 87).

28 <sup>11</sup> All references to “USDC ECF No.” are to the numbers assigned to the documents filed  
in the Mandamus Proceeding.

1 of the Mandamus Proceeding, the Global Settlement Conference was continued on multiple  
2 occasions.

3 On February 23, 2021, an order was entered denying an ex parte application to have the  
4 Manning MSJ heard on shortened time. (Second AECF No. 29). Thereafter, the hearing on the  
5 Manning MSJ was continued on multiple occasions in light of the pending Global Settlement  
6 Conference as well as the pending Mandamus Proceeding.

7 On February 25, 2022, orders were entered continuing the Global Settlement Conference  
8 to June 23, 2022, and continuing status conferences on the Dismissal Motion and the Johnson  
9 Fee Application to July 6, 2022. (Second ECF Nos. 170 and 171).

10 On March 11, 2022, the USDC entered an order in the Mandamus Proceeding denying all  
11 requested relief. (USDC ECF No. 37).

12 On May 18, 2022, Trustee Nelson filed a motion for an extension of time to commence  
13 actions encompassed by Section 546(a) (“Extension Motion”) that was noticed to be heard on  
14 June 22, 2022. (Second ECF Nos. 183, 184 and 185).

15 On June 10, 2022, Attorney Lueck filed notices rescheduling the hearings on the  
16 Dismissal Motion and the Exclusion Motion for July 13, 2022, along with additional points and  
17 authorities regarding both matters. (Second ECF Nos. 197, 198 and 199).

18 On June 14, 2022, an order was entered vacating the Global Settlement Conference and  
19 scheduling a status conference for July 20, 2022. (Second ECF No. 203).

20 On June 22, 2022, the Extension Motion was heard. At the hearing, the court ordered  
21 that the Exclusion Motion, the Dismissal Motion, the Johnson Fee Application, and the Manning  
22 MSJ would be heard on July 20, 2022, that any additional oppositions must be filed by July 6,  
23 2022, and that any additional replies be filed by July 13, 2022.

24 On June 29, 2022, an order was entered granting the Extension Motion, allowing Trustee  
25 Nelson until May 18, 2023, to commence actions encompassed by Section 546(a). (Second ECF  
26 No. 210).

27 On July 5, 2022, Debtor filed its opposition to the Dismissal Motion. (Second ECF No.  
28 214).

1 On July 6, 2022, Trustee Nelson filed an omnibus opposition to the Dismissal Motion,  
2 the Exclusion Motion, and the Johnson Fee Application as well as a declaration of Elizabeth  
3 Fletcher. (Second ECF Nos. 215 and 216).

4 On July 12, 2022, Attorney Lueck filed a Reply Points and Authorities in Support of the  
5 [Dismissal Motion], the [Exclusion Motion], and Trustee’s Response to Amended [Johnson Fee  
6 Application] (“First Dismissal Reply”) along with a declaration of Attorney Lueck, and  
7 supplemental exhibits in support of the First Dismissal Reply. (Second ECF Nos. 222, 223 and  
8 224).

9 On July 14, 2022, Attorney Lueck filed another “Reply Points and Authorities” in  
10 support of the Dismissal Motion, but this time it relates only to the Dismissal Motion (“Second  
11 Dismissal Reply”). (Second ECF No. 225).

12 On July 15, 2022, Debtor filed a joinder to Trustee Nelson’s opposition to the Dismissal  
13 Motion, the Exclusion Motion, and Trustee Nelson’s response to the amended Johnson Fee  
14 Application. (Second ECF No. 226).<sup>12</sup>

15 On July 20, 2022, arguments were heard regarding the Johnson Fee Application, the  
16 Dismissal Motion, the Manning MSJ, and the Exclusion Motion, whereupon all matters were  
17 taken under submission.<sup>13</sup>

## 18 SUMMARY JUDGMENT STANDARDS

19 Summary judgment is governed by Civil Rule 56. Summary judgment may be granted  
20 only if “the movant shows that there is no genuine dispute as to any material fact and that the  
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22 <sup>12</sup> Debtor’s joinder was filed by the Johnson Firm as attorneys for the Debtor. It is not  
23 entirely clear how the Johnson Firm had authority on July 15, 2022, to file a document on behalf  
24 of the Debtor when Trustee Nelson already had been appointed. By that time, Garry Hart also  
25 had been removed as a co-executor and as the manager of the Debtor. Bertsch was the only  
26 remaining executor of the Probate Estate and he was represented by the Shumway Van law firm.  
27 Bertsch also had been appointed as the sole manager of the Debtor. In other words, the Johnson  
28 Firm apparently had no authority to file anything on behalf of the Debtor at the time the joinder  
was filed. Presumably, the joinder was intended by the Johnson Firm to address only the  
Johnson Fee Application.

<sup>13</sup> Separate orders have been entered contemporaneously herewith on the Johnson Fee  
Application, the Manning MSJ, and the Exclusion Motion.

1 movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a). For summary  
2 judgment purposes “[m]aterial facts are those that may affect the outcome of the case.” Farmer  
3 v. Las Vegas Metro. Police Dep’t, 423 F.Supp.3d 1008, 1013 (D. Nev. 2019), citing Anderson v.  
4 Liberty Lobby, Inc., 477 U.S. 242, 248 (1985). Findings of fact may not be entered because  
5 summary judgment may only be granted where there are no disputed issues of fact. See Animal  
6 Legal Def. Fund v. U.S. Food & Drug Admin., 836 F.3d 987, 989-90 (9th Cir. 2016).

7 A genuine issue of material fact exists when “the evidence is such that a reasonable jury  
8 could return a verdict for the nonmoving party.” Id. The moving party’s evidence is judged by  
9 the same standard of proof applicable at trial. See Celotex Corp. v. Catrett, 477 U.S. 316, 323  
10 (1986); see also Southern Calif. Gas Co. v. City of Santa Ana, 336 F.3d 885, 888 (9th Cir. 2003).  
11 The burden of proof is on the party seeking the summary judgment, but the inferences are  
12 viewed in favor of the opposing party. See Eastman Kodak Co. v. Image Technical Services,  
13 Inc., 504 U.S. 451, 456 (1992); see also Miller v. Glenn Miller Prods., Inc., 454 F.3d 975, 987  
14 (9th Cir. 2006). Determinations of intent or credibility generally are ill-suited for disposition by  
15 summary judgment. See Fogel Legware, etc. v. Wills (In re Wills), 243 B.R. 58, 65 (B.A.P. 9th  
16 Cir. 1999). Once the moving party demonstrates the absence of disputed material facts, the  
17 responding party must provide admissible evidence raising a genuine dispute. The responding  
18 party cannot rely solely on conclusory allegations unsupported by factual data. See Farmer v.  
19 Las Vegas Metro. Police Dep’t, 423 F.Supp.3d at 1014 (“the nonmoving party cannot avoid  
20 summary judgment by relying solely on conclusory allegations that are unsupported by factual  
21 data [. . .] instead, the opposition must go beyond the assertions and allegations of the pleadings  
22 and set forth specific facts by producing competent evidence that shows a genuine issue for  
23 trial.”) (external citations omitted).

## 24 DISCUSSION

25 The Second Adversary is the State Action that was removed by Manning in the First  
26 Chapter 11 and the Second Chapter 11. Although the State Action was commenced by the  
27 Debtor against Manning on or about March 5, 2019, the causes of action alleged in the Debtor’s  
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1 complaint have not been litigated.<sup>14</sup> The complaint is framed as causes of action for breach of  
2 contract, breach of implied covenant of good faith and fair dealing, breach of fiduciary duty,  
3 unjust enrichment, fraud or intentional misrepresentation, and conversion.

4 After the State Action was commenced, the Debtor commenced the Second Chapter 11  
5 on May 18, 2020.

6 After the Second Chapter 11 was commenced, the Probate Court removed Garry Hart as  
7 co-executor of the Probate Estate and as manager of the Debtor on July 23, 2020, in favor of  
8 Bertsch as the sole executor and manager of the Debtor

9 After Garry Hart was removed as manager of the Debtor, Manning removed the State  
10 Action to the bankruptcy court on August 12, 2020.

11 After the State Action was removed, Trustee Nelson was approved as the Chapter 11  
12 trustee for the Debtor on August 31, 2020.

13 After the Chapter 11 trustee was approved, the Manning MSJ was filed on October 26,  
14 2020.

15 After the Manning MSJ was filed, the hearing on the motion was continued on multiple  
16 occasions spanning over 20 months.

17 Despite the passage of 20 months, opposition to the Manning MSJ has never been filed  
18 by the Chapter 11 trustee<sup>15</sup>, the sole executor of the Debtor, nor any other party in interest. As a

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20 <sup>14</sup> Attached to the Removal Notice are copies of 16 pleadings or documents filed in the  
21 State Court, including the Debtor's complaint, an order denying Manning's motion to dismiss,  
22 and answer and counterclaim. Exhibit E to the Removal Notice is the State Court's order signed  
23 December 12, 2019, denying the dismissal motion on a conclusion that the complaint contains  
24 allegations that are legally sufficient to constitute the elements of the claims asserted. Exhibit H  
25 to the Removal Notice is a copy of Manning's answer and counterclaim. The counterclaim  
26 against the Debtor asserts eleven allegedly separate causes of action, including breach of  
27 contract, breach of covenant of good faith and fair dealing, declaratory relief, fraud/intentional  
28 misrepresentation, breach of fiduciary duty, abuse of process, concert of action, civil conspiracy,  
attorney's fees, defamation, and intentional infliction of emotional distress. The prayer of the  
counterclaim seeks, *inter alia*, recovery from the Debtor of undetermined amounts for  
compensatory and punitive damages, interest, and attorney's fees.

<sup>15</sup> Manning's counsel attests that he discussed the Debtor's complaint with counsel for  
the Chapter 11 trustee. Counsel attests that upon review of the record, Trustee Nelson's counsel  
expressed her view that the Debtor's "claims against Defendants are bogus." Wirthlin

1 result, Manning's request for summary judgment on all causes of action alleged in the complaint  
2 is unopposed.

3 As discussed at note 15, supra, the State Court complaint survived an initial pleading  
4 challenge. On summary judgment, however, the court considers the testimony set forth in the  
5 Manning Declaration, as well as the documents attached to the SUF and the Removal Notice.  
6 Manning seeks entry of judgment as a matter of law on all claims alleged by the Debtor. The  
7 Manning MSJ asserts the following four grounds for such relief: (1) that the Debtor failed to  
8 advance advertising costs to Manning that was a condition precedent to the Debtor's contract  
9 claims, (2) that the Debtor failure to advance the advertising costs was an initial breach of  
10 contract that allowed Manning to refuse further performance of a bilateral contract, (3) that the  
11 written agreement allegedly breached by Manning included a provision releasing all claims  
12 between the parties upon payment of the required commission, and (4) that Jeffrey P. Manning  
13 signed the subject agreement for Manning Auctions, LLC d.b.a. Luxea Global, a Nevada limited  
14 liability company, only in his representative capacity.

15 Because each of the grounds for summary judgment are sufficiently supported by the  
16 testimony in the Manning Declaration and the documents submitted, the burden shifts to the  
17 Debtor to offer admissible evidence raising a genuine dispute of material fact. Alternatively, the  
18 non-moving party to a summary judgment motion can make a properly supported request to  
19 conduct discovery or obtain evidence to respond. See Fed.R.Civ. P. 56(d). In this instance, after  
20 more than 20 months, no admissible evidence has been offered in opposition, nor has a request  
21 been made for additional time.

22 Under these circumstances, the court concludes that Manning has met its burden of proof  
23 and that summary judgment should be granted. All of the uncontested grounds asserted by  
24 Manning are legally sufficient to warrant judgment as a matter of law. Because the Manning  
25  
26

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27 Declaration at ¶ 4. While the statement attributed to other counsel may or may not be  
28 objectionable as hearsay or as inadmissible settlement discussions, it may explain why no  
opposition to the Manning MSJ has ever been filed.

1 MSJ seeks summary judgment only with respect to the claims alleged in the Debtor's complaint,  
2 the court does not address the counterclaims asserted by Manning.<sup>16</sup>

3 **IT IS THEREFORE ORDERED** that the Motion for Summary Judgment as to Debtor  
4 Hartland MMI, LLC's Claims Against Defendants Manning Auctions, LLC dba Luxea Global  
5 and Jeffrey P. Manning, Adversary Docket No. 5, be, and the same hereby is, **GRANTED**.

6  
7 Copies sent via CM/ECF ELECTRONIC FILING

8 Copies sent via BNC to:

9 HARTLAND MMI, LLC  
10 ATTN: OFFICER OR MANAGING AGENT  
11 265 EAST WARM SPRINGS ROAD, SUITE 104  
12 LAS VEGAS, NV 89119

13 HARTLAND MMI, LLC  
14 ATTN: OFFICER OR MANAGING AGENT  
15 553 EAST OAKLEY BLVD  
16 LAS VEGAS, NV 89104

17 JAMES J. JIMMERSON, ESQ.  
18 JAMES M. JIMMERSON, ESQ.  
19 THE JIMMERSON LAW FIRM  
20 415 S. 6TH ST., #100  
21 LAS VEGAS, NV 89101

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26 <sup>16</sup> The counterclaims against the Debtor form the basis for the proofs of claim filed by  
27 Manning on September 23, 2020, as claim nos. 4 and 5. Because the Manning MSJ does not  
28 dispose of all claims or causes of action alleged in the State Action, compare FED.R.CIV.P. 54(b),  
it may need to voluntarily dismiss the counterclaims without prejudice to permit a judgment to  
be entered.