



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
August 20, 2020

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:)	Case No. 20-12409-MKN
)	
HARTLAND MMI, LLC,)	Chapter 11
)	
Debtor.)	Date: August 12, 2020
)	Time: 9:30 a.m.

ORDER ON MOTION TO APPOINT A CHAPTER 11 TRUSTEE¹

On August 12, 2020, a hearing was held on the Motion to Appoint a Chapter 11 Trustee (“Motion”) brought by Manning Auctions, LLC (“Manning”). The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND²

On February 8, 2017, Hartland MMI, LLC (“Debtor”) commenced a voluntary Chapter 11 reorganization proceeding, denominated Case No. 17-10549 (“First Chapter 11”). (First ECF

¹ In this Order, all references to “ECF No.” are to the numbers assigned to the documents filed in the above-captioned case as they appear on the docket maintained by the Clerk of the Court. Documents filed in the prior Chapter 11 proceeding commenced by the same debtor will be referenced as “First ECF No.” Documents filed in an adversary proceeding related to the First Chapter 11 will be referenced as “First Adversary ECF No.” All references to “Section” are to provisions of the Bankruptcy Code, 11 U.S.C. § 101, *et seq.* All references to “NRS” are to the Nevada Revised Statutes. All references to “FRE” are to the Federal Rules of Evidence.

² Pursuant to FRE 201(b), the court takes judicial notice of all materials appearing on the docket in the Debtor’s bankruptcy cases and any related adversary proceedings, as well as the publicly filed documents referenced in those materials. See *U.S. v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980). See also *Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998) (taking judicial notice of court filings in a state court case where the same plaintiff asserted similar claims); *Bank of Am., N.A. v. CD-04, 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.”).

1 No. 1).³ Debtor's primary asset consisted of real property located at 1040 S. Sixth Street, Las
2 Vegas, Nevada, known as the Hartland Mansion. Debtor filed the Chapter 11 proceeding to
3 "stop a pending foreclosure by the mortgage holder" on the Hartland Mansion. See Debtor's
4 "Motion to Auction Property Free and Clear of Liens" at 2:8-11, filed February 20, 2018 (First
5 ECF No. 159); Debtor's "Status Report on Sale of Real Property Free and Clear of Liens" at 2:8-
6 10, filed June 5, 2018 (First ECF No. 214).⁴

7 On July 26, 2018, an order was entered approving the sale of the Hartland Mansion for a
8 gross purchase price of \$2.9 million. (First ECF No. 258). The order provided, *inter alia*, for a
9 variety of claims secured by the property to be satisfied at the time of closing, as well as various
10 amounts to be paid to other parties, including Manning and Robert Lueck ("Lueck").

11

12 ³ Debtor's voluntary petition in the First Chapter 11 was signed by Garry Hart as
13 manager of the limited liability company. Attached to the petition was the Debtor's schedules of
14 assets and liabilities ("Schedules"). The Schedules were amended on numerous occasions. (First
15 ECF Nos. 21, 23, 44). On its secured creditor Schedule "D," Debtor listed Hartco as having a
16 secured claim in the amount of \$177,500. On its unsecured creditor Schedule "E/F," Debtor
17 listed, *inter alia*, Larry Bertsch as having a noncontingent, liquidated and undisputed claim in the
18 amount of \$43,001.00 and the Estate of Ailene Hart as having a noncontingent, liquidated and
19 undisputed claim in the amount of \$124,521.38. On the same date, Debtor filed its statement of
20 financial affairs ("SOFA") that was amended several times during the course of the proceeding.
21 (First ECF Nos. 3, 22, 24, and 45). Item 28 of each SOFA attests that the Estate of Ailene Hart
22 holds 100% of the interest in the Debtor and that Garry Hart is the manager of the limited
23 liability company. Also on the same date the petition was filed, Debtor filed a Corporate
24 Ownership Statement identifying the Estate of Ailene Hart as being the sole owner of the Debtor.
25 (First ECF No. 6). Additionally, Debtor filed a Statement Regarding Authority to Sign and File
26 Petition, attaching a Resolution of Board of Directors of Hartland MMI, LLC, signed by Garry
27 Hart as manager. (First ECF No. 7). Despite filing these items under penalty of perjury, a List
28 of Equity Security Holders also was filed on February 8, 2017, signed by Garry Hart, attesting
that the Estate of Ailene Hart and "Garry Hart/Hartco" have an "Ownership" interest in the
Debtor. (First ECF No. 8).

24 ⁴ On June 12, 2018, a Supplemental Declaration of Larry Bertsch ("Bertsch") in Support
of the Status Report Filed, was filed by the Debtor in the First Chapter 11. (First ECF No. 231).
25 Attesting in favor of the proposed sale of the Hartland Mansion, Bertsch attests that he is "the
26 executor of the Toni Hart Estate" and that "The Real Property that is the subject of this
27 bankruptcy was part of the Toni Hart Estate." It appears that "Toni Hart" was the nickname for
Ailene Hart. It is not clear from the declaration whether Bertsch, at the time, was the sole
28 executor of the Estate of Ailene Hart, a co-executor with Garry Hart, or the remaining executor
after the removal of Garry Hart.

1 On December 10, 2018, an order was entered approving the final application for
2 compensation of Debtor’s bankruptcy counsel, David Winterton (“Winterton”). (First ECF No.
3 301).

4 On December 26, 2018, an order was entered granting a motion to dismiss the Chapter 11
5 proceeding brought by the Office of the United States Trustee (“UST”). (First ECF No. 305).⁵

6 On March 5, 2019, Debtor filed a civil complaint in the Eighth Judicial District Court,
7 Clark County, Nevada (“State Court”), denominated Case No. A-19-790498-C (“State Action”).
8 Debtor’s complaint sought damages against Manning and its principal, Jeff Manning
9 (collectively “Manning”), for their conduct in connection with the sale of the Hartland Mansion
10 in the First Chapter 11. Manning thereafter removed the State Action to the bankruptcy court,
11 denominated Adversary Proceeding No. 19-01068 (“First Adversary”). (First ECF No. 309).

12 On September 3, 2019, an order was entered remanding the State Action to the State
13 Court. (First Adversary ECF No. 26).

14 On May 18, 2020, Debtor commenced the instant Chapter 11 proceeding (“Second
15 Chapter 11”). (Second ECF No. 1). The voluntary Chapter 11 petition is accompanied by the
16 Debtor’s schedules of assets and liabilities (“Schedules”) and statement of financial affairs
17 (“SOFA”).⁶ Debtor’s property Schedule “A/B” lists three categories of property of the Second
18 Chapter 11 bankruptcy estate: cash in the amount of \$382,849.96 held in the trust account of
19 attorney Winterton, miscellaneous office equipment and furnishings having a value of
20 \$151,664.00, and various contingent and unliquidated claims against multiple parties, including
21 Manning, attorneys and other professionals, and service providers having an aggregate value of

24 ⁵ The First Chapter 11 was dismissed without confirmation of a Chapter 11 plan of
25 reorganization. As a result, the Debtor’s personal liability for any claims that existed when the
26 First Chapter 11 case was filed were not discharged.

26 ⁶ The bankruptcy petition, Schedules and SOFA are signed under penalty of perjury
27 through the electronic signature of Garry Hart as manager of the Debtor. On May 19, 2020,
28 Debtor filed a copy of a “Resolution of Managers of Hartland MMI, LLC” dated May 18, 2020.
The resolution is signed by Garry Hart as manager of the limited liability company.

1 \$1,536,000.00.⁷ The total current value of all assets of the Debtor is listed at \$2,070,513.96.
2 Debtor's secured creditor Schedule "D" lists attorney Winterton as having a claim in the amount
3 of \$30,004.18, secured by a statutory lien against the cash held in attorney Winterton's trust
4 account. No other secured creditors are listed. Debtor's unsecured creditor Schedule "E/F" lists
5 14 claimants or notice-only parties having priority and non-priority claims totaling \$75,950.00.
6 Debtor's co-debtor Schedule "H" lists the Estate of Ailene Hart, the Estate of Larry David Hart,
7 and Garry Hart as co-debtors of various obligations owed by the Debtor, with Garry Hart as the
8 executor, co-executor, or principal of the co-debtor party. Debtor's SOFA, at Item 11.1,
9 discloses that its current bankruptcy counsel, Johnson & Gubler, P.C., was not paid a retainer
10 before the filing of the Chapter 11 petition, but received jewelry from Garry Hart's spouse as
11 collateral for payment. At Item 13.1, the SOFA lists only one transfer of money or property
12 outside of the ordinary course of business to another person within 2 years: the sale of the
13 Hartland Mansion on September 10, 2018, for the amount of \$2.9 million.⁸ At Item 28, the
14 SOFA lists Garry Hart and the Estate of Ailene Hart (with Garry Hart as co-executor),
15 respectively, as the only manager and member of the Debtor. On the same date the Chapter 11
16 petition was filed, a notice of bankruptcy was entered ("Bankruptcy Notice") scheduling a
17 meeting of creditors for June 25, 2020. (Second ECF No. 4).⁹

18

19

20 ⁷ Debtor's current property Schedule "A/B" does not specify when the various contingent
21 and unliquidated claims against third parties accrued. No such claims were scheduled in the First
22 Chapter 11. If any of those claims existed when the First Chapter 11 was commenced, the
23 failure to schedule such claims under penalty of perjury in the First Chapter 11 might bar or limit
24 such claims under the doctrine of judicial estoppel. See, e.g., Schwartzer v. United States (In re Hawkins), 2020 WL 2323062 (D.Nev. May 11, 2020) (consideration of judicial estoppel for Chapter 7 trustee's pursuit of action under Federal Torts Claims Act that individual debtor failed to disclose in bankruptcy schedules).

25 ⁸ There is no mention of the payments made from escrow to various lienholders and
26 creditors of the First Chapter 11 estate.

27 ⁹ The meeting was not concluded but was continued on several occasions, including to
28 August 13, 2020. The Bankruptcy Notice also published a deadline of September 23, 2020, for proofs of claim to be filed by non-governmental creditors, and November 16, 2020, for proofs of claim to be filed by governmental creditors.

1 On June 11, 2020, Debtor filed its operating report for the month of May 2020. (Second
2 ECF No. 18).

3 On June 17, 2020, Lueck filed a “Motion to Exclude Funds as Property of the Estate”
4 (“Exclusion Motion”). (Second ECF No. 21). Lueck seeks entry of an order determining that
5 the funds held by attorney Winterton at the commencement of the instant Chapter 11 proceeding
6 are assets of the Estate of Ailene Hart under the jurisdiction of the State Court. The Exclusion
7 Motion was noticed to be heard on July 22, 2020 but was continued to be heard concurrently
8 with the instant Motion. (Second ECF Nos. 22 and 43).¹⁰

9 On June 25, 2020, Debtor filed an amended Chapter 11 petition. (Second ECF No. 25).
10 The amended Chapter 11 petition bears the electronic signature of Garry Hart as manager of the
11 Debtor.

12 On June 26, 2020, Manning filed the instant Motion seeking the appoint of a Chapter 11
13 trustee pursuant to Section 1104(a). (Second ECF No. 30). Attached to the Motion are 31
14 separate exhibits, the majority of which are copies of pleadings, documents, orders, transcripts,
15 registries, and minutes filed and entered in various proceedings before Nevada judicial and
16 administrative bodies. Exhibit 11 to the Motion is a copy of a Declaration of Jeffrey P. Manning
17 (“Manning Declaration”) and Exhibit 12 consists of a copy correspondence dated February 18,
18 2018, from attorney Winterton addressed to William Forster, Linda Forster, and Garry Hart
19 (“Winterton Letter”). The Motion was noticed to be heard on August 5, 2020, and the hearing
20 was continued by stipulation to August 12, 2020. (Second ECF Nos. 31 and 38).

21 On July 29, 2020, Debtor filed its opposition to the Motion (“Opposition”). (ECF No.
22 44). Attached to the Opposition are 8 documents marked as Exhibits A through H, most of
23 which are copies of documents, transcripts, and other items filed and entered in Nevada judicial
24 proceedings. Exhibit A to the Opposition is a copy of a Declaration of Garry Hart (“Hart
25 Declaration”).

26 On August 5, 2020, Manning filed its reply in support of the instant Motion (“Reply”).
27 (ECF No. 45). Attached to the Reply are two additional exhibits. Exhibit 32 is a copy of another

28 ¹⁰ A separate order has been entered concurrently with respect to the Exclusion Motion.

1 document filed in a Nevada court. Exhibit 33 is a “flash drive” that apparently includes a digital
2 copy of the meeting of creditors that was commenced but not concluded in this Chapter 11
3 proceeding.

4 On August 7, 2020, and August 12, 2020, joinders in the instant Motion were filed on
5 behalf of Lueck (“Lueck Joinders”). (Second ECF Nos. 50 and 54). Attached to the Lueck
6 Joinders are various documents filed in a probate proceeding pending in the State Court entitled
7 In the Matter of the Estate of Ailene E. Hart, aka, Toni Hart, Deceased, Case No. P-14-080879-E
8 (“Probate Matter”).

9 APPLICABLE LEGAL STANDARDS

10 A Chapter 11 debtor-in-possession has a fiduciary duty to all creditors of the estate rather
11 than to its officers, managers, shareholders, or members. See, e.g., In re CWNevada, LLC, 602
12 B.R. 717, 726 (Bankr. D. Nev. 2019), citing Woodson v. Fireman’s Fund Ins. Co. (In re
13 Woodson), 839 F.2d 610, 614 (9th Cir. 1988). That fiduciary duty also extends to counsel for
14 the debtor-in-possession. See Everett v. Perez (In re Perez), 30 F.3d 1209, 1219 (9th Cir. 1994);
15 see also In re J.T. Thompson, USA, 2012 WL 4461650, at *4 (Bankr. C.D. Cal. Sep. 25, 2012).
16 As debtor in possession, a Chapter 11 debtor has all the rights and powers, and shall perform the
17 duties, of a Chapter 11 trustee. See 11 U.S.C. §1107(a).

18 In addition to certain duties of a Chapter 7 bankruptcy trustee under Section 704, see 11
19 U.S.C. §1106(a)(1), a Chapter 11 trustee is required to “investigate the acts, conduct, assets,
20 liabilities, and financial condition of the debtor, the operation of the debtor's business and the
21 desirability of the continuance of such business.” Id. at §1106(a)(3). Additionally, “as soon as
22 practicable,” a Chapter 11 trustee must: “(A) file a statement of any investigation conducted
23 under paragraph (3) of this subsection, including any fact ascertained pertaining to fraud,
24 dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the
25 affairs of the debtor, or to a cause of action available to the estate,” and (B) “file a plan under
26 section 1121 of the title, file a report of why the trustee will not file a plan, or recommend
27 conversion of the case . . . or dismissal of the case.” Id. at §1106(a)(4)(A) and §1106(a)(5).

28

1 At any time prior to confirmation of a plan of reorganization, Section 1104 requires the
2 appointment of a Chapter 11 trustee, after notice and hearing, for either of the following grounds:

- 3 (1) for cause, including fraud, dishonesty, incompetence, or gross
4 mismanagement of the affairs of the debtor by current
5 management, either before or after the commencement of the
6 case, or similar cause....; or
7 (2) if such appointment is in the interests of creditors, any equity
8 security holders, and other interests of the estate, without regard
9 to the number of holders of securities of the debtor or the amount
10 of assets or liabilities of the debtor.

11 11 U.S.C. §1104(a)(1 and 2) (emphasis added). A Chapter 11 trustee also may be appointed *sua*
12 *sponte* by the bankruptcy court. See In re CWNevada LLC, 602 B.R.at 727 n.23. “The
13 appointment of a trustee in a Chapter 11 case is an extraordinary remedy” because it is presumed
14 that current management is in the best position to reorganize the debtor’s financial affairs. See
15 generally 7 COLLIER ON BANKRUPTCY, ¶1104.02[b][i] (Richard Levin and Henry J. Sommer,
16 eds., 16th ed. 2020). However, that presumption may be overcome, for example, where there is
17 sufficient evidence of extraordinary acrimony existing between management, creditors and
18 parties in interest. See, e.g., In re Thomas, 596 B.R. 350 (Bankr. W.D. Tenn. 2019)(appointment
19 of a neutral trustee in best interests of creditors and the estate where longstanding acrimony
20 exists between creditors and debtor).

21 Some factors that are considered when courts decide whether or not to appoint a trustee
22 in the interests of creditors and the estate are: “(1) the trustworthiness of the debtor, (2) the past
23 and present performance of the debtor and the prospects for rehabilitation, (3) the confidence
24 level of creditors and the business community in the debtor, and (4) whether the benefits of
25 appointing a trustee outweigh the associated costs.” See United Surety & Indemnity Co. v.
26 Lopez-Munoz (In re Lopez-Munoz), 553 B.R. 179, 195–96 (B.A.P. 1st Cir. 2016), aff’d sub
27 nom. In re Lopez-Munoz, 866 F.3d 487 (1st Cir. 2017). Such factors are not a limitation and the
28 totality of the circumstances in a given proceeding will dictate the court’s exercise of discretion.
See 7 COLLIER ON BANKRUPTCY, supra, ¶1104.02[d][i, ii and iii].

1 **DISCUSSION**

2 The court having considered the written and oral arguments of counsel, together with the
3 exhibits and materials submitted by the parties,¹¹ concludes that appointment of a Chapter 11
4 trustee is in the best interests of creditors and the estate under Section 1104(a)(2).¹² Several
5 reasons compel this conclusion.

6 First, the public record in the Probate Matter reflects that on July 23, 2020, an “Order
7 Removing Garry Hart as Co-Executor of the Estate and Suspending Garry Hart as Manager of
8 the Hartland MMI LLC Pending Further Review by the Remaining Co-Executor” was entered by
9 Judge Gloria Sturman (“Removal Order”).¹³ Because the automatic stay in the instant Chapter
10 11 proceeding did not apply to bar continued prosecution of the Probate Matter, and the public
11 record does not reflect that the Removal Order has been stayed, it appears that Garry Hart is no
12 longer permitted to act on behalf of management for the Debtor in this Chapter 11 proceeding.¹⁴

13
14 ¹¹ Other than the Manning Declaration and the Hart Declaration submitted as exhibits by
15 the parties, the copies of the attached exhibits to the Motion, Opposition, and Reply, are not
16 authenticated under FRE 901. Other than the Winterton Letter, no objections have been raised as
17 to the court’s consideration of any of the exhibits. While the Winterton Letter reflects competent
18 bankruptcy advice, it is immaterial to the court’s resolution of the instant Motion. After notice
19 and a hearing, the court previously approved attorney Winterton’s services in the First Chapter
20 11 as being necessary and reasonable.

21 ¹² The court makes no express determination that cause exists under Section 1104(a)(1)
22 based on fraud, dishonesty, incompetence, or gross mismanagement before or after
23 commencement of the case. Because appointment of a Chapter 11 clearly is in the best interests
24 of creditors and the estate in any event, it is unnecessary to determine if current management
25 violated an express order or requirement of the probate court. The automatic stay arising in
26 bankruptcy generally does not prevent a state court from imposing contempt sanctions against
27 parties that violated its orders. See, e.g., Dingley v. Yellow Logistics, LLC (In re Dingley), 852
28 F.3d 1143, 1147-48 (9th Cir. 2017) (civil contempt proceeding to enforce state court sanction
order excluded from the automatic stay under Section 362(b)(4)). Thus, nothing prevents the
probate court from considering the imposition of sanctions against any individuals who violated
its orders.

¹³ The Removal Order memorialized the State Court’s oral ruling at a show cause hearing
conducted on July 15, 2020. According to the Court Minutes for that hearing, Garry Hart was
present as well as Linda S. Hart, Bertsch, Lueck, and other parties and their counsel.

¹⁴ The probate court’s oral order removing Garry Hart was issued at the show cause
hearing on July 15, 2020, and the Removal Order memorializing that ruling was entered on July

1 Second, Debtor's prior Chapter 11 proceeding was commenced for the express purpose
 2 of preventing a foreclosure sale of the Hartland Mansion by the mortgage holder. The property
 3 was sold free and clear of liens, the liens against the property were paid, and the First Chapter 11
 4 was dismissed. The instant Second Chapter 11 was commenced with only one secured creditor,
 5 attorney Winterton. Attorney Winterton has a claim of \$30,004.18, secured by cash in the
 6 amount of \$382,849.96 held in his client trust account. According to the Debtor's Schedule "D,"
 7 there are no other liens against those funds. According to the Debtor's Schedule "E/F," the
 8 instant Chapter 11 was commenced with only 12 possible unsecured creditors having claims
 9 against the Debtor totaling \$75,950.00. Unlike the First Chapter 11, the Debtor is not threatened
 10 by imminent foreclosure of its assets and it appears to have sufficient resources to pay all
 11 scheduled claims in full.

12 Third, the Debtor's own Schedules, signed under penalty of perjury, evidence that its
 13 liquid assets exceed the amount of the scheduled claims. As a result, it likely will be required to
 14 pay all allowed unsecured claims in full in order to confirm a Chapter 11 plan over the objections
 15 of any impaired class of unsecured creditors. See 11 U.S.C. § 1129(b)(2)(B)(i). Alternatively,
 16 Debtor's existing owner, i.e., the Estate of Ailene Hart, will be required under the "absolute
 17 priority rule"¹⁵ to pay new value in the form of money or money's worth to retain its interest in
 18 the Debtor. Id. at § 1129(b)(2)(B)(ii). See also United States Bancorp Mortgage Co. v. Bonner
 19 Mall Partnership (In re Bonner Mall Partnership), 2 F.3d 899, 915-916 (9th Cir. 1993), appeal
 20 dismissed, 115 S.Ct. 386 (1994). Because the Debtor's manager attests that the interest has a
 21 cash value of at least \$382,849.96, the Estate of Ailene Hart likely will be required to contribute
 22 that amount to retain its interest in the Debtor.¹⁶ Unless a proposed Chapter 11 plan meets one of

23
 24 23, 2020. The Hart Declaration was signed on July 29, 2020. There is no mention of the oral
 25 ruling or entry of the Removal Order in the Hart Declaration.

26 ¹⁵ "A simple statement of the absolute priority rule is that owners of a reorganizing entity
 27 cannot retain their ownership interests unless objecting unsecured creditors are paid in full." In
 28 re Submarina, Inc., 2016 Bankr.LEXIS 4701, at *11 n.19 (Bankr. D. Nev. Nov. 9, 2016).

¹⁶ As mentioned at note 5, supra, a plan of reorganization was never proposed in the First
 Chapter 11 and no discharge was ever obtained by the Debtor in that case.

1 these requirements, it cannot be “crammed down” over the objections of a dissenting class of
2 unsecured creditors.

3 Fourth, the Debtor’s management is plagued by conflicts. The voluntary Chapter 11
4 petition was signed and filed by Garry Hart as manager of the Debtor. According to the Debtor’s
5 Schedule “H,” Garry Hart individually is a co-debtor with respect to Lueck, who is scheduled as
6 a creditor of the Debtor’s estate. According to Schedule “H,” Garry Hart also is the sole
7 executor of the Estate of Ailene Hart, which is a co-debtor of Dana Dwiggins, Esq. and Larry L.
8 Bertsch, CPA, who are listed as creditors of the Debtor’s estate. According to Schedule “H,”
9 Garry Hart also is the co-executor of the Estate of Larry David Hart, which is a co-debtor of
10 Robert Morris and Jim Jimmerson, Esq., who are listed as creditors of the Debtor’s Estate.
11 According to the Debtor’s SOFA, Garry Hart is the sole manager of the Debtor and the Estate of
12 Ailene Hart is the sole member of the Debtor. According to the public docket in the State
13 Action, however, a third-party complaint was brought by Manning against Garry Hart and other
14 individuals on or about February 4, 2020. Additionally, a default on the third-party complaint
15 was entered against Garry Hart on or about April 13, 2020. Although the automatic stay arising
16 from the Debtor’s bankruptcy proceeding does not prevent Manning from proceeding against
17 Garry Hart individually, the allegations and relief sought in the third-party action place him in
18 conflict with the interests of the Debtor. This result is magnified by Garry Hart’s removal as co-
19 executor of the Debtor. Neither the third-party complaint nor the default against Garry Hart are
20 disclosed on the co-debtor Schedule “H” nor in Item 7.2 of the SOFA, both of which were
21 certified under penalty of perjury.

22 Finally, there apparently is a history of extraordinary acrimony between management and
23 multiple entities. For example, the public record indicates that the Debtor, when it was managed
24 by decedent Larry Hart, actually commenced a State Court action against Garry Hart on or about
25 April 17, 2015, denominated Case No. A-15-717128-B (“Larry Hart Action”), seeking damages
26 and injunctive relief. See Manning Exhibit 1. While that action was pending, Debtor also
27 sought temporary and preliminary injunctive relief against Garry Hart based on a variety of
28 alleged civil and criminal mischief, including misuse and misappropriation of assets, destruction

1 of property, threats of bodily harm, racial epithets and intimidation directed towards employees
2 and parties, and misuse of civil process. See Manning Exhibit 2 (“Hartland TRO Motion”).¹⁷
3 Additionally, the public records indicate that on February 25, 2019, Garry Hart and his affiliated
4 entities were the subjects of numerous adverse determinations in a Final Decision and Order
5 entered by the Nevada State Contractors Board (“Board”). See Manning Exhibit 4. Those
6 determinations included findings that Garry Hart made false statements in recording a lien
7 notice, submitted a falsified contract to the Board, and failed to provide complete copies of
8 employee records.¹⁸ Moreover, the public records also indicate that on or about March 11, 2020,
9 Manning commenced a proceeding against Garry Hart in the Justice Court of Las Vegas
10 Township, Clark County, Nevada (“Justice Court”), denominated Case No. 20PO0391, through
11 an Application for Order for Protection Against Stalking, Aggravated Stalking, or Harassment
12 (NRS 200.591). See Manning Exhibit 22. Manning alleged that on March 9, 2020, Garry Hart,
13 individually, threatened physical bodily harm to Manning and made defamatory remarks in a
14 public setting.¹⁹ Manning also alleged that Garry Hart made similar threats on prior occasions.
15 The Justice Court granted a protection order and extended it for an additional 90 days at a
16 hearing conducted on May 27, 2020. See Manning Exhibit 28. The protection order against
17 Garry Hart is scheduled to expire on August 25, 2020. See Manning Exhibit 29. Garry Hart’s
18 concurrent motion to dissolve the protection order was denied. See Manning Exhibit 30. While
19 the outcomes of the above-mentioned proceedings may be uncertain, they are sufficient to
20 suggest that the trustworthiness of management, prospects for reorganization, and the confidence
21 of creditors and the business community is doubtful at best.

22

23 ¹⁷ The public records reveal that request for interim injunctive relief against Garry Hart
24 was abandoned only after Larry David Hart died on June 19, 2015. See Debtor’s Exhibit B at
pages 2-3 of 6; Debtor’s Exhibit C.

25

26 ¹⁸ The public records also indicate that Garry Hart’s appeal of the Board’s decision was
dismissed on or about January 8, 2020. See Manning Exhibit 6.

27

28 ¹⁹ The conduct alleged by Manning appears to be similar to that alleged against Garry
Hart by numerous individuals mentioned in the Larry Hart Action. See Exhibits 11, 12, 13, 14,
and 15 to Hartland TRO Motion.

1 Under these circumstances, the court concludes that the benefits of appointing a neutral
2 third party to manage the Debtor in this Second Chapter 11 outweighs the likely costs.²⁰ In
3 carrying out his or her duties under Section 1106(a), the assigned Chapter 11 trustee also must
4 evaluate the concerns raised by the Exclusion Motion.

5 **IT IS THEREFORE ORDERED** that the Motion to Appoint a Chapter 11 Trustee,
6 brought by Manning Auctions, LLC, Docket No. 30, be, and the same hereby is, **GRANTED**.

7 **IT IS FURTHER ORDERED** that the Office of the United States Trustee shall appoint
8 a Chapter 11 trustee in the above-captioned proceeding forthwith and that **a status conference**
9 **shall be held on September 30, 2020, at 9:30 a.m.**

10 **IT IS FURTHER ORDERED** the Chapter 11 trustee assigned to the case shall file a
11 status report no later than two business days prior to the status conference.

12
13 Copies sent via CM/ECF ELECTRONIC FILING

14 Copy sent via BNC to:
15 HARTLAND MMI, LLC
16 ATTN: OFFICER OR MANAGING AGENT
553 EAST OAKLEY BLVD
LAS VEGAS, NV 89104

17 # # #

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²⁰ The court's determinations are based on the publicly available record of determinations
27 made by other tribunals as well as documents submitted to this court by or on behalf of the
28 Debtor under penalty of perjury. Even under a higher "clear and convincing evidence" standard,
rather than a preponderance of evidence requirement, appointment of a Chapter 11 trustee is
appropriate.