

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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ELISABETH MORSE,

Plaintiff,

- v -

LOVELIVE TV US, INC
and RICHARD COHEN,

Defendants.
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Index No. 650110/2017

**VERIFIED FIRST AMENDED
COMPLAINT**

Jury Trial Demanded

Plaintiff, Elisabeth Morse (“Plaintiff”), attorney *pro se*, for her first amended complaint against Defendants LoveLive TV US, Inc. and Richard Cohen, alleges, upon information and belief, the following at all relevant times:

Summary

1. This is a breach of contract action in which Plaintiff alleges that Defendant LoveLive US informally dissolved without accounting to creditors, namely to Plaintiff pursuant to an employment contract, that LoveLive US is liable to Plaintiff thereunder, and further that as the Chief Executive Officer and sole Director of LoveLive US, Defendant Cohen remains personally liable to Plaintiff for the failure to account to creditors pursuant to New York Business Corporation Law (“BCL”) § 1006 due to the informal dissolution of LoveLive US.

2. This Court, during oral arguments on March 5, 2020, ruled giving Plaintiff leave to refile this amended complaint on this index number within thirty (30) days of such ruling. (See **Exhibit A**, Transcript, March, 5, 2020.) As New York courts were not accepting filings such as this one at the time of this Court’s deadline, Plaintiff, pursuant to NYCPLR §R3025(b), is now filing this Amended Complaint.

The Parties

3. Plaintiff, Elisabeth Morse, is an individual residing in New York County, New York.
4. Defendant, LoveLive TV US, Inc. (“LoveLive US”) is a Delaware corporation.
5. LoveLive US is a foreign corporation licensed to do business in New York State.
6. LoveLive US headquartered its offices in New York, New York.
7. LoveLive US conducted business in New York State.
8. Defendant Richard Cohen (“Defendant Cohen”) resides in London, England and is a citizen of England.
9. Defendant Cohen is the Chief Executive Officer of LoveLive US.
10. Defendant Cohen is the sole Director of LoveLive US.
11. On August 1, 2019, this Court denied Defendants’ Motion to Dismiss the Complaint against Defendant Cohen. (See **Exhibit B**, Court Order and Motion.)
12. Personal jurisdiction has been established over LoveLive US.
13. Personal jurisdiction has been established over Defendant Cohen.

Statement of Facts

Plaintiff’s Employment Agreement

14. On July 1, 2026, Plaintiff and LoveLive US entered an employment agreement for Plaintiff’s employment as Senior Vice President Business Affairs and Strategic Development (the “Employment Agreement”). (See **Exhibit C**.)
15. The Employment Agreement provided that, should Defendants and Plaintiff extend Plaintiff’s employment with LoveLive US through 2017 Plaintiff would receive an

increase in salary of Fifty Thousand Dollar (\$50,000) in January of 2017 and a bonus of twenty percent (20%) payable in the next calendar year.

16. The Employment Agreement states that: “If by the end of 2016, either you or the Company decide not to extend to 2017, and assuming targets are met, you will be granted a lump sum payment equivalent to 20% of annual 2016 salary (to be paid in early 2017)” (the “Severance Amount”).

17. During negotiation of the Employment Agreement, Plaintiff and LoveLive US agreed that “targets” meant satisfactory performance by Plaintiff of her services for LoveLive US.

18. Plaintiff agreed to accept the Severance Amount provision of the Employment Agreement in lieu of a “market” salary.

19. The Employment Agreement states that Plaintiff would be entitled to receive the Severance Amount if targets were met but her employment was not extended through 2017.

Plaintiff's Performance Met All Targets

20. Plaintiff commenced employment with “LoveLive” on or about July 18, 2016.

21. Plaintiff provided legal, business affairs, and strategic development services to LoveLive.

22. Plaintiff consistently received positive evaluations and feedback from her supervisor, LoveLive’s Chief Operating Officer, Marisa Bangash (“COO Bangash”).

23. Plaintiff met all the prerequisite targets for LoveLive US necessary for the payment of the Severance Amount.

Termination Was Not for Cause

24. On or about November 15, 2016, COO Bangash informed Plaintiff that, due to Lovelive US's financial difficulties, LoveLive US would not extend Plaintiff's employment into 2017.

25. COO Bangash stated to Plaintiff that LoveLive US was "downsizing" and Plaintiff's position would not be replaced.

26. COO Bangash stated to Plaintiff had she met her targets and would be entitled to the Severance Amount.

27. On November 23, 2016, Defendant Cohen stated in an email provided to COO Bangash that Plaintiff was owed the Severance Amount, stating: "It seems perfectly obvious to me that the 20% bonus is due, as we have no intention of making performance an issue." (See **Exhibit D**, Cohen Email.)

Informal Dissolution /Liquidation of Assets

28. On December 2, 2016, LoveLive US ceased doing all business. (See **Exhibit E**, Holland Email.)

29. On December 3, 2016, LoveLive US's parent company, LoveLive UK, terminated the employment of all LoveLive US employees, including all executives and Plaintiff.

30. The termination of all LoveLive US employees was announced by Defendant Cohen during a video conference call.

31. LoveLive US has not filed for bankruptcy, nor has it assigned its assets to a third-party fiduciary for the benefit of its creditors.

32. LoveLive US has not sent any formal communication to its creditors accounting for or regarding the disposition of LoveLive US assets.

33. LoveLive US has paid other former LoveLive employees amounts they were contractually owed upon termination.

34. On December 27, 2016, Plaintiff issued a correspondence to LoveLive's Chief Financial Officer James Holland ("CFO Holland") and inquired whether LoveLive US had filed for bankruptcy. (See **Exhibit F**, Morse Email.)

35. Mr. Holland replied to Plaintiff on January 4, 2017 and stated that LoveLive US "ceased to trade on 2nd December 2016 pursuant to a resolution of the directors," but had "decided against bankruptcy." (See **Exhibit E**, Holland Email.)

36. Plaintiff replied to Mr. Holland's letter that "ceasing to trade" is not a concept providing protection under United States Bankruptcy law and that the Severance Amount was due. (See **Exhibit G**, Morse Follow-Up Email.)

37. On February 10, 2017, Defendants' attorneys sent a letter to Plaintiff's attorney stating that Defendants have no intention of paying Plaintiff the Severance Amount or any other compensation. (See **Exhibit H**, ReedSmith Letter.)

Defendant Cohen

38. Defendant Cohen is the sole registered and active Director of LoveLive US.

39. Defendant Cohen has not denied that he is the sole registered Director of LoveLive US. (See **Exhibit J**, Cohen Affidavit.)

40. All material business decisions of LoveLive US are subject to the approval of Defendant Cohen.

41. Under New York law, where it is impossible or futile to obtain a judgment against a defunct corporation that has defaulted on debts by "Informal Dissolution", creditors can

maintain an action directly against the directors or shareholders. (See **Exhibit K**, *In Re Hartley*, 479 B.R. 635, 640-641 [2012]).

42. Under BCL §1006, directors incur derivative personal liability when they undertake to divest a corporation of all its property and in reality, dissolve with without undertaking the proceedings for voluntary dissolution. (See **Exhibit L**, *Parent v Amity Autoworld, Ltd.*, 15 Misc.3d 633, 640 [2007].)

43. On March 5, 2020, at oral arguments, this Court agreed: "...you have a fiduciary duty as a director of one of the things that you don't do as a director is sell off assets while knowing that you have creditors who are entitled to notice before you sell those assets." (See **Exhibit A**, March 5, 2020 Transcript, p. 10.)

44. Defendants' counsel has confirmed on the record that LoveLive US has defaulted against creditors by informal dissolution, stating LoveLive US "went bust," is a "now-defunct New York company," and an "out-of-business enterprise." (See **Exhibit M**, Defendant's Memorandum of Law, Pages 1 and 6 and **Exhibit N**, Transcript of TV Tech v. Cohen dated 8-18-17.)

45. On December 8, 2016, after defaulting on creditors by Informal Dissolution, LoveLive US disbursed cash assets to select employees as payroll compensation. (See **Exhibit O**, Morse Bank Statement.)

46. On or about December 2016, Gemma Rowe Johnson ("Informal Liquidator Johnson") was contracted by LoveLive UK to liquidate LoveLive US's material assets.

47. CFO Holland and Informal Liquidator Johnson confirm Informal Liquidator Johnson's intention to liquidate corporate assets in the attached emails. (See **Exhibit P**, Rowe Email, and **Exhibit E**, Holland Email).

48. CFO Holland confirms: “[LoveLiveUS has] made payments to staff in respect of accrued PTO and salary to December 2, 2016. We further understand that this has exhausted the company’s cash on hand. *The contractor is in the process of liquidating the remaining assets of the company...*” (italics added.) (See **Exhibit E**, Holland Email.)

49. In addition to cash, LoveLive US transferred and/or informally liquidated various non-cash assets by informal dissolution, including office equipment, computer equipment, and kitchen equipment.

50. On March 5, 2020, at oral arguments, Defense counsel confirmed that no formal notice of dissolution or accounting was ever provided to creditors of LoveLive US. (See **Exhibit A**, Transcript, p.9.)

51. On March 5, 2020, at oral arguments, Defense counsel failed to refute or explain LoveLive US’s liquidation of assets as described by CFO Holland and Informal Liquidator Johnson. (See **Exhibit A**, Transcript).

52. LoveLive US has never produced an accounting of assets to creditors.

53. LoveLive US has never formally dissolved.

54. LoveLive US has defaulted in payments owed to Plaintiff.

55. LoveLive US has breached Plaintiff’s Employment Agreement.

56. As a consequence of LoveLive US’s breach of Plaintiff’s Employment Agreement, Plaintiff has been damaged in an amount that exceeds the jurisdictional limits of the lower Courts.

57. As a consequence of LoveLive US’s informal dissolution, Plaintiff has been damaged in an amount that exceeds the jurisdictional limits of the lower Courts.

58. LoveLive US remains liable to Plaintiff for breach of contract.

59. Defendant Cohen remains liable to Plaintiff due to LoveLive US's Informal Dissolution.

AS AND FOR PLAINTIFF'S FIRST CAUSE OF ACTION

Breach of Contract

60. Plaintiff repeats and realleges the allegations of the foregoing paragraphs as if fully set forth herein.

61. At all times relevant in this action, Plaintiff and Defendants were parties to a valid and enforceable contract, specifically the Employment Agreement.

62. Plaintiff performed her obligations under the Employment Agreement.

63. Plaintiff met all employment performance "targets" contemplated under the Employment Agreement.

64. Defendants acknowledged that Plaintiff's employment performance was satisfactory under the Employment Agreement.

65. Plaintiff's employment by LoveLive US was not extended to 2017.

66. Plaintiff is entitled to receive the Severance Amount contemplated under the Employment Agreement.

67. Defendants have refused to pay Plaintiff the Severance Amount.

68. By virtue of the foregoing, LoveLive US has breached the Employment Agreement, resulting in damages to Plaintiff in an amount to be determined at trial.

AS AND FOR PLAINTIFF'S SECOND CAUSE OF ACTION

Director Liability under BCL §1006 and NY Doctrine

69. Plaintiff repeats and realleges the allegations of the foregoing paragraphs as if fully set forth herein.

70. Defendant Cohen was the sole director of LoveLive US.

71. LoveLive US informally dissolved without undertaking formalities pursuant to BCL §2006.

72. LoveLive US liquidated various material assets after its informal dissolution.

73. LoveLive US never produced an accounting of assets to its creditors.

74. LoveLive US breached the Employment Agreement between LoveLive US and Plaintiff.

75. By virtue of the foregoing, Defendant Cohen remains liable to Plaintiff for LoveLive US's breach of contract due to LoveLive US's informal dissolution.

WHEREFORE, Plaintiff demands judgment in its favor and against Defendants:

A. Recognizing that Defendant Richard Cohen may be held liable for the Severance Amount due to his role as sole director of LoveLive US and the Informal Dissolution of LoveLive US;

1. Granting an award of damages against Defendants on the first cause of action for \$30,000.00;

2. Granting and awarding Plaintiff reimbursement of her reasonable costs and attorneys' fees on all causes of action; and

3. Such other and further relief as to this Court shall deem just and proper.

Dated: May 19, 2020
New York, New York

Certified pursuant to Court Rule 130-a



Elisabeth Morse, Esq.
Pro Se Plaintiff
5 Carmine St., #3
New York, NY 10014
(917) 968-9253

To: Wallace Neel, Esq.
43 West 43rd Street, Suite 65
New York, NY 10036-7424
(646) 524-6502