

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CLAIM NO: CV2011-02982**

**BETWEEN**

**ELIZABETH LABAN**

**CLAIMANT**

**AND**

**EVOLVING TECKNOLOGIES AND ENTERPRISE  
DEVELOPMENT LIMITED**

**(Parent Company and Successor of  
MEDICAL DATA CARIBBEAN LIMITED)**

**DEFENDANT**

**Before the Honourable Madame Justice C. Pemberton**

**Appearances:**

**For the Claimant: Mr. C. Weatherhead**

**For the Defendant: Mr. B. Reid instructed by Mr. B. M. Sutherland**

**DECISION**

**[1] BACKGROUND**

This is a most unfortunate case. When this matter came to my attention, it was immediately apparent that the following preliminary issue emerged:

**HAS THE CLAIMANT SUED THE PROPER DEFENDANT?**

**[2]** Directions for submissions in writing were given, to which only the Defendant, Evolving Tecknologies and Enterprise Development Limited (E-Teck) responded in a timely manner. Nothing was filed on the

Claimant, Ms. Elizabeth Laban's behalf. Some three months after the deadline I am now writing this decision.

[3] **ANALYSIS AND CONCLUSION**

The E-Teck submits that Ms. Laban has not sued the proper corporate body, in that this action should have been brought against Medical Data Caribbean Limited (MDCL). E-Teck has agreed that Ms. Laban was employed with MDCL. MDCL was a wholly owned subsidiary of E-Teck. MDCL however, ceased operations on March 31, 2009 and is being wound up. There is no indication of this event in the heading of the action or in the body of the Claim.

[4] Even though MDCL is a subsidiary of E-Teck, it is trite law that these two companies have separate and distinct legal personalities. As such, neither can be fixed with the other's liability. In order to find liability I must pierce the corporate veil.

[5] I agree with E-Teck's submission that a parent corporation is not without more, responsible for its subsidiary's tortious actions. To my mind, Ms. Laban had to go further to cause the Court to lift the corporate veil. There are no facts stated to suggest that that course of action is justified in this case. What I mean is, there is nothing stated to suggest that Ms. Laban's employer, MDCL is an agent or *alter ego* of the named Defendant, E-Teck or that the employer company, MDCL was a sham or cloak for wrongful purposes of the Defendant, or that the employer company was incorporated by the Defendant for a purpose that was improper, illegal, objectionable or fraudulent.

[6] Further, there is no duty of care owed by E-Teck to Ms. Laban that is immediately apparent on the Statement of Case. There is no indication

that the losses suffered by Ms. Laban were reasonably foreseeable. In fact, and I borrow Mr. Sutherland's words,

*No special relationship existed between the Defendant and the Claimant to suggest that there was an assumption of responsibility by the Defendant.<sup>1</sup>*

[7] In any event, Ms. Laban is in clear breach of the Order of November 18, 2011. There has been no application for extension of time to file submissions and no application for relief from sanctions.

[8] In the premises the Claimant's Statement of Claim filed on August 8, 2011 is dismissed.

**IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Claimant's Statement of Case filed on August 8, 2011 be and is hereby dismissed.
2. The Claimant do pay the Defendant's cost to be assessed if not agreed.
3. Defendant to file and serve Statement of Costs on or before May 4, 2012.
4. Claimant to file and serve reply on or before May 18, 2012.
5. Hearing to take place as part of FCMC on June 18, 2012 at 10:30 a.m. in POS 17.

Dated this 5<sup>th</sup> day of April, 2012.

/s/ CHARMAINE PEMBERTON  
HIGH COURT JUDGE

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<sup>1</sup> Written Submissions of the Defendant for the Direction of the Court on a Preliminary Issue Pursuant to CPR Part 26.1. Para. 11.