

CITATION: *Lance James Slade v CGH Group Pty Ltd* [2023] NTWHC 6

PARTIES: Lance James SLADE  
v  
CGH GROUP PTY LTD ABN 72 122 760 427

TITLE OF COURT: WORK HEALTH COURT

JURISDICTION: WORK HEALTH

FILE NO(s): 2021-03919-LC & 2022-00792-LC

DELIVERED ON: 3 May 2023

DELIVERED AT: Darwin

HEARING DATE(s): 12 April 2023

JUDGMENT OF: Judicial Registrar Gordon

**CATCHWORDS:**

Consolidation - tests and procedure

*Return to Work Act 1986*

*Bellview Investments Pty Ltd & Ors v Dean Investments Pty Ltd & Ors* (1997) NTSC 143

**REPRESENTATION:**

*Counsel:*

Worker: R Dancis

Employer: K Stephenson

*Solicitors:*

Worker: HWL Ebsworth

Employer: Shine Lawyers

Judgment category classification: B  
Judgment ID number: [2023] NTWHC 6  
Number of paragraphs: 46

IN THE WORK HEALTH COURT  
AT DARWIN IN THE NORTHERN  
TERRITORY OF AUSTRALIA

No. 2021-03919-LC & 2022-00792-LC

BETWEEN:

LANCE JAMES SLADE

Worker

AND:

CGH GROUP PTY LTD ABN 72 122 760 427

Employer

REASONS FOR DECISION

(Delivered 3 May 2023)

1. The Worker has commenced two proceedings in the Work Health Court. The first on 21 December 2021 under Court file number 2021-03919-LC and the second on 21 March 2022 on Court file number 2022-00792-LC.
2. It is a pre-condition of commencing a proceeding in the Work Health Court that the parties first attempt to mediate the dispute and obtain a mediation certificate verifying same<sup>1</sup>, the Worker must also ensure a copy is filed with their Application<sup>2</sup>. The Worker in this matter has two separate and distinct disputes with the Employer under s85 of the *Return to Work Act 1986*, one relating to an alleged physical injury<sup>3</sup> and another in relation to an alleged psychological injury<sup>4</sup>.

---

<sup>1</sup> *Return to Work Act 1986* s103J.

<sup>2</sup> *Work Health Court Rules 1999*.

<sup>3</sup> For which a 'no change' Mediation Certificate was issued on 29 November 2021.

<sup>4</sup> Mediated on 14 February 2022.

3. After the Mediation Certificates for each dispute were issued, the proceedings were filed separately as set out above.
4. The Court first dealt with the two files concurrently at an initial Directions Conference on 16 February 2023. At the conclusion of the conference the following orders were made, individually, on each Court file:
  - a. *“Worker to file and serve Statement of Claim within 21 days;*
  - b. *Employer to file and serve Notice of Defence 21 days thereafter;*
  - c. *Mutual Discovery 14 days thereafter;*
  - d. *Adjourned to 20 April 2023 at 9.00 am...”*
5. Subsequently, on each Court file the Worker filed an identical Statement of Claim which plead both the “Physical Injuries Claim” and the “Mental Injury Claim”<sup>5</sup>.
6. In response the Employer filed an Interlocutory Application<sup>6</sup> which sought to have the Statement of Claim, which effectively consolidated the two injuries into one pleading, struck out and for the Worker to re-plead the disputes individually on each file.
7. Thereafter the Worker filed an Interlocutory Application<sup>7</sup> seeking that the two proceedings be consolidated, that the Worker be permitted to proceed on the Statement of Claim as previously filed and the Employer to file a consolidated Notice of Defence to same.
8. The Applications were heard jointly on 12 April 2023, with the key question across both applications ultimately being – should the proceedings be consolidated and if so or if not, what procedural directions flow on thereafter.
9. The *Work Health Court Rules 1999* are silent on the consolidation of proceedings.
10. The *Local Court (Civil Jurisdiction) Rules 1998* provide guidance at r12.07:

*“Where 2 or more proceedings are before the Court and:*

---

<sup>5</sup> Statement of claim filed 16 March 2023.

<sup>6</sup> Filed 29 March 2023.

<sup>7</sup> Filed 3 April 2023.

- (a) a common question of law or fact arises in both or all of them;*
- (b) the rights to relief claimed in the proceedings are in respect of or arise out of the same transaction or series of transactions; or*
- (c) for any other reason it is desirable to make an order under this rule,*  
*the Court may order that:*
  - (d) the proceedings be consolidated;*
  - (e) the proceedings be heard at the same time or one immediately after the other; or*
  - (f) any of the proceedings be stayed until after the determination of any other of them”*

11. In this instance the Worker submits:

*“The Proceedings concern the same parties;*

*The matters both involve claims for workers compensation with an overlap of facts contributing to the injuries the Worker has sustained, as laid out in the SoC;*

*The relief sought can be determined in respect to the series of transactions;*

*The mental injury claimed by the Worker is as a result of a series of transactions and includes the same transaction for which the Worker also claims the physical injury arose, being the transaction on 12 October 2021;*

*The consolidation of the Proceedings will be cost effective for the parties;*  
*and*

*The consolidation of the Proceedings will allow the proceedings to be dealt with more efficiently.”<sup>8</sup>*

---

<sup>8</sup> Submissions of the Worker filed 11 April 2023.

12. As noted by the Employer in their submissions, the case law on consolidation is sparse. Notably this observation was also given twice by Justice Thomas in the decision of *Bellview Investments Pty Ltd & Ors v Dean Investments Pty Ltd & Ors* (1997) NTSC 143 (“*Bellview*”), which remains the authority on consolidation in the Northern Territory more than 25 years later.

13. Her Honour provided the following in *Bellview*<sup>9</sup>:

*“As I stated earlier, the case law is sparse. Having said that, I have by no means exhaustively canvassed all the authorities. However, based on those authorities mentioned, I would summarise the principals relevant to the exercise of the Courts discretion as follows:*

*1. Are there common questions of law or fact, or a common transaction or series of transactions, of sufficient importance which render it desirable that the whole of the matters should be disposed of at the same time.*

*2. Is it convenient that the actions be consolidated in order to avoid a multiplicity of actions and ensure savings of time and cost.*

*3. Is the Court satisfied that the consolidation is unlikely to result in unfairness to any party, or to prejudice a parties ability to conduct their case.*

*4. Will the consolidation be conducive to a just resolution of the issues between the parties.*

*5. The Court should have regard to any relevant practical matters which may make it inexpedient to consolidate the proceedings.*

*This is by no means an exhaustive list. Regard must always be had to the particular circumstances of any application to consolidate proceedings.”*

14. The Worker argues that the matter meets both the tests as set out in the *Local Court (Civil Jurisdiction) Rules* and the principles established in *Bellview*.

---

<sup>9</sup> *Bellview Investments Pty Ltd & Ors v Dean Investments Pty Ltd & Ors* (1997) NTSC 143 at page 9.

15. In relation to the common questions of law or fact the Worker says that the questions of law will be the same in both proceedings, namely, did the Worker suffer a compensable injury as defined by the *Return to Work Act 1998*, in the course of his employment and what, if any, incapacity arose as a result<sup>10</sup>. I would agree with this proposition.
16. With regard to the factual nexus of the claims the worker has plead a serious of incidents giving rise to the mental injury, and in relation to the physical injury details events which took place on 11 and 12 October 2021.
17. The Worker argues that the mental injury was “*caused and/or aggravated or exacerbated by the physical injury*” and that “*there will also be an overlap in some of damages claimed by the Worker, especially in regards to the Workers loss of income for periods of past incapacity.*”<sup>11</sup>
18. The Employer argues that a consolidation will risk muddying the waters and blur the lines of evidence. The Employer submits that in relation to any evidence where there is witness overlap, the witness can simply give any evidence relating to both the physical and psychological claims concurrently, and that the court can effectively hear the matters alongside one another, without the need to for formal consolidation.
19. It seems to me that the thrust of the Employers submission is that it is not necessary to consolidate, rather than there is good reason not too. As noted by the Worker’s representative, it is not uncommon for a Worker’s application to the Work Health Court to concern more than one injury and for subsequent injuries / disputes to be consolidated into an active proceeding or for one action to be brought to resolve multiple disputes. It is far from rare and this Court is adept at hearing and determining such matters.
20. Indeed, had the Worker originally filed only one proceeding, while producing two mediation certificates, thus invoking the jurisdiction of the Court in relation to both disputes, the Employer would only have one proceeding in which to appear to answer any and all disputes therein.

---

<sup>10</sup> Submissions of the Worker filed 11 April 2023 at paragraph 14.

<sup>11</sup> Submissions of the Worker filed 11 April 2023 at paragraphs 16 – 17.

21. The Employer, in my view, doesn't argue against there being some overlap of law and fact, rather that it can be adequately managed without consolidation.
22. I accept that there will be some evidence which pertains discretely to one dispute only and that certain witnesses, for instance medical experts whose field of speciality is limited to physical or psychological, who can speak only to one of the disputes. I am however likewise satisfied that based on the pleadings there will be common questions of law or fact arising out of a series of transaction between the parties.
23. The Employer also argued that the matters giving rise to the alleged workplace injuries were better characterised as a series of interactions, not transactions.
24. I accept that the particulars relied upon by Worker would not ordinarily be described as 'transactions'. In my view however, the use of the word transactions in the scarce case law reflects that in civil litigation, commenced by Statement of Claim, the relief sought is ordinarily monetary in nature.
25. I do not form a view that the descriptor of 'transactions' in authorities relating to consolidation was designed to restrict the application of the principles to monetary transactions only or exclude a series of events or interactions.
26. In support of this conclusion I note that the second claim in *Bellview* related to damages for an alleged assault<sup>12</sup>, which would presumably, (in the absence of the full facts of that matter) also be better described as an interaction not transaction.
27. Finally I note the Miriam Webster dictionary which, alongside a definition relating to the exchange of goods and services, provides that transaction can be taken to mean:

*"a: an act, process, or instance of transacting*

*b: a communicative action or activity involving two parties or things that reciprocally affect or influence each other"*<sup>13</sup>

and that this definition does not fall outside the events as described by the Worker.

28. The Worker further argues:

*"22. In the event the Proceedings were kept separate the parties would be required to:*

---

<sup>12</sup> *Bellview Investments Pty Ltd & Ors v Dean Investments Pty Ltd & Ors* (1997) NTSC 143 at page 3.

<sup>13</sup> <https://www.merriam-webster.com/dictionary/transaction>.



*22.1 Provide two separate sets of pleadings which separate the issues where relevant, but ultimately plead similar matters;*

*22.2 Provide two separate List of Documents, and provide discovery in both matters, which would considerably overlap, with only some documents being relevant to the two separate injuries claimed;*

*Seek evidence from witnesses (who are relevant to both claims) but separate the evidence as required so that it is wholly relevant to the claim to which it applies, even though the Worker submits a lot of the evidence will also overlap.*

*23. The Worker submits by consolidating the Proceedings, the Court process would also be dealt with more efficiently, saving the Court time and costs of having to otherwise deal with the overlapping facts, arguments, documents, and evidence.”<sup>14</sup>*

29. The Employer argues that the Workers application for consolidation is an abuse of process, designed to make good the pleadings which incorrectly, and without an order of the Court, consolidated the disputes.

30. The Employer argues that there is no inconvenience to having the matters travel together and the Worker ought not have tried to unilaterally alter the course of the proceedings by filing consolidated pleadings on two separate files.

31. The Employer submitted that duplicate documents such as a List of Documents being replicated on two files is not an excessive burden but rather a simple cut and paste exercise. With respect, I cannot accept that submission.

32. In my view, the separation of the disputes and maintenance of two files will unavoidably result in time, energy and costs being expended to make sure each individual document is uniquely accurate to its relevant file. For a List of Documents care must be taken to ensure only documents pertaining to the physical / mental injury are on the correct file, while ensuring those relevant to both, appear on both lists.

33. For a Case Management Statements, attention to witnesses, length of hearing and outstanding issues (i.e. further and better particulars / discovery) must be individually considered. Further documents, for instance Trial Books, may also be impacted by duplicity.

---

<sup>14</sup> Submissions of the Worker filed 11 April 2023 at paragraphs 22 -23.

34. I accept the Employers argument that the Worker should not have filed the pleadings on both files in their current form, without having sought formal Orders for consolidation. The process adopted was not correct. Proceedings must first be consolidated prior to filing consolidated pleadings. There was no basis upon which the Worker could bring into issue the psychological injury, in the proceedings commenced in relation to his alleged physical injuries and under the auspices of the mediation certificate which dealt only with the physical injury dispute, and visa versa.
35. Misguided as it may be, I do not however, go so far as to agree that this amounted to a wilful abuse of court process, or that the procedural irregularity weighs heavily on the final outcome of the question of consolidation.
36. On the contrary and irrespective, I am satisfied that a consolidation would indeed serve to avoid a multiplicity of actions and produce savings of time and cost. I am also of the view that dispensing with the need for duplicate, but different, Court documents such as those discussed above reduces the risk of error, accidental omission or irrelevant inclusion across two proceedings.
37. Turning then to any likely prejudice rising out of consolidation, the Worker submits that the Employer has been on notice of the Workers intention / preference for consolidation for some time, and both parties have filed evidence setting out their respective communications regarding the benefits or otherwise of consolidation<sup>15</sup>.
38. The Worker notes that the question of consolidation will be answered prior to the filing of the Notice of Defence, so the Pleadings in defence have not been compromised in any way. Rather, should the Court decline to allow consolidation, the detriment will be to the Worker. As was conceded at the Hearing, should consolidation not be ordered, the Worker will need to re-plead on both files.
39. The Employer argues a potential unfairness in a deficiency in the Worker not pleading an exacerbation of the psychological injury. As raised during submissions in my view, that is a matter for the Worker and if he has not adequately plead his injury and raised an exacerbation into the issues in dispute then it may ultimately be to his detriment.

---

<sup>15</sup> Affidavit of Kelly Ann Stephenson filed 3 April 2023 and Affidavit of Reinis Dancis filed 29 March 2023.

40. While these issues may give rise to a pleadings dispute in the future, in my view it was not a factor-giving rise to a prejudice relevant to consideration of consolidation. Consolidation or otherwise will not, in my view, rectify this complaint.
41. I accept the Employers submission that the proceedings *could* be run alongside each other, all the way to a final Hearing. But the key question is not *can* it be done, but *should* it be done.
42. The mere fact that consolidation is not inevitable is not grounds to resist an application for consolidation. Even in response to procedural irregularities and the Workers misplaced attempt to file consolidated pleadings on individual files, the question of consolidation should be considered on its merits, looking forward in the proceedings, not back.
43. In my view, the tests in *Bellview* support consolidation. There is an overlap of facts and law in both proceedings, arising out of what can be characterised as a common set of transactions, in particular the events of 11 and 12 October 2021 which the Worker alleges is relevant to both his physical and mental injuries.
44. I am satisfied that there are savings as to cost and time to support consolidation and that consolidation can result in a just and expedient resolution of the issues in dispute.
45. Finally, no unfairness or prejudice to the Employer has been identified, noting that the Employer is yet to plead on either file and will now have the opportunity to file consolidated pleadings.
46. Accordingly, for the reasons set out above, Court files 2021-03919-LC and 2022- 00792-LC will be consolidated and hereinafter proceed under Court file number 2021-03919-LC.

47. The Orders I make are:

1. The Employers Interlocutory Application filed 29 March 2023 is dismissed;
  2. Court files 2021-03919-LC and 2022-00792-LC are consolidated and hereinafter proceed under Court file number 2021-03919-LC;
  3. The statement of claim dated 16 March 2023 be considered duly filed and served on consolidated Court file 2021-03919-LC;
  4. The Employer to file and serve its consolidated Notice of Defence within 14 days;
  5. Mutual discovery 14 days thereafter;
  6. The pre-hearing conference listed for 4 May 2023 is vacated;
  7. Matter is listed for pre-hearing conference on 5 June 2023 at 10.15 am;
  8. Attendance of represented parties excused;
  9. Any party seeking costs in relation to the Interlocutory Applications to notify the Court and the other party of same by COB Friday 5 May 2023, with submissions on costs to be listed before the Judicial Registrar on Wednesday 10 May 2023 at 2.00 pm.
-