

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Civil
Case No. 24/926 SC/CIVL

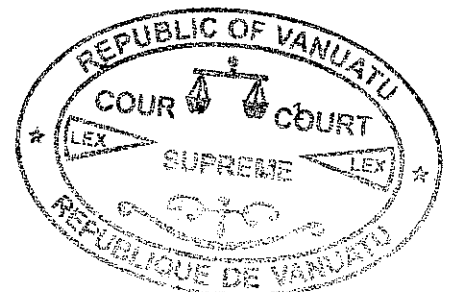
BETWEEN: **Mark David Morton**
Claimant
AND: **Michael Karl Klatt**
Defendant
AND: **API Limited (10825)**
First Interested Party
AND: **Waterford Limited (3375)**
Second Interested Party
AND: **Mark William Conway**
Third Interested Party

Date of Hearing: 26 August 2025
Before: Justice V.M. Trief
In Attendance: Claimant – Mr Loughton (via video link) & Mr N. Morrison
Defendant – Mr R. Sugden
First Interested Party – Ms J. La'au
Second & Third Interested Parties – Mr M. Hurley
Date of Decision: 3 November 2025

DECISION AS TO STRIKE-OUT APPLICATION

A. Introduction

1. On 27 June 2025, the Defendant Michael Karl Klatt filed Defendant's Further Amended Application for orders striking out the Claim and indemnity costs (the Application').



2. Mr Klatt is the Administrator of the will of Malcolm Roy Smith (deceased). Mr Smith died in Australia on 4 April 2021. He was ordinarily resident in Papua New Guinea. Mr Klatt is the Administrator of Mr Smith's (the 'deceased') estate pursuant to an order of the Supreme Court of Queensland dated 18 May 2022 and to Letters of Administration with the Will attached dated 25 May 2022.
3. On 2 August 2023, Mr Klatt filed his sworn statement in the reseal proceedings in support of his reseal application (the 'reseal sworn statement') [copy of its first page attached to the Defendant's Further Submissions filed on 21 August 2025 – **Annexure A – "C"**].
4. Attachment C of Mr Klatt's reseal sworn statement is in the following terms:

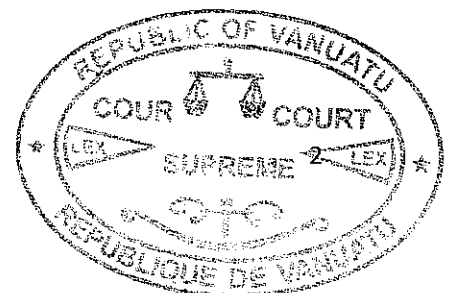
ATTACHMENT C

Inventory of the property of the estate of MALCOLM ROY SMITH also known as MALCOLM ROY SMITH-KELA, Director, of House 17, Pacific Estate, Goroka, Eastern Highlands Province, Papua New Guinea, (deceased).

DESCRIPTION	ESTIMATED VALUE VT
API LIMITED (10825) [International Company] <i>((i) 100% shares held in Asia Pacific Aerospace Pty Limited ACN 057 052 025; (ii) 47.25% shares in Aeropower Holdings Pty Limited ACN 051 078 972)</i>	AUD \$62.8 million in net assets, per the latest financial statements available (subject to discovery of assets)

5. On 31 August 2023, the Letters of Administration with the Will attached were resealed in the Supreme Court of Vanuatu by Order by the Deputy Master in Probate Case No. 2027 of 2023 (the 'reseal proceedings').
6. The Claimant Mark David Morton is a beneficiary of Mr Smith's estate, and was named in his Will as an executor of the Will along with three others. However, following disputes amongst the 4 executors, the Queensland Court revoked the appointment of the 4 executors and appointed Mr Klatt as the Administrator of the Will.
7. Mr Morton is also the Authorised Representative for the First Interested Party API Limited (10825) ('API'), appointed by API after Mr Smith's death.¹

¹ *API Ltd v Klatt* [2024] VUCA 25 at [8].



8. API was listed in Attachment C of Mr Klatt's reseal sworn statement as property of Mr Smith's estate (see above). It is an international company registered in Vanuatu under the *International Companies Act*. Its records are confidential: ss 125A and 125B of that Act.²
9. The Second Interested Party Waterford Limited (3375) ('Waterford') is a local company and a general service provider under the *Company and Trust Services Providers Act* No. 8 of 2010 (the 'CTSP Act'). Waterford is the registered agent of API.³
10. The Third Interested Party Mark William Conway trades under the business name Conway and Co, a general services provider under the CTSP Act, and at various times for many years has provided and continues to provide general corporate services to API. He is a director of Waterford.⁴
11. On 25 March 2024, Mr Morton filed the Claim in the present matter Civil Case No. 926 of 2024 ('CC 24/926') in which he alleged the following:

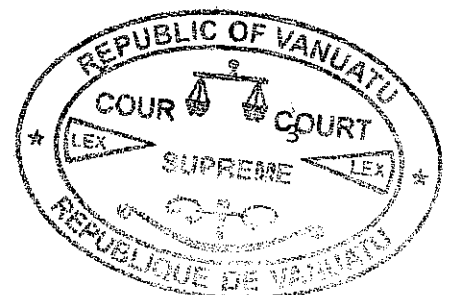
1. *The Claimant has at all material times been a beneficiary of the Estate of Malcolm Roy Smith (Estate).*
2. *The Defendant was on 31 August 2023 appointed administrator of the Estate by grant of a reseal of Letters of Administration by the Supreme Court of Vanuatu (Reseal).*
3. *The parties to this Claim are also parties to Supreme Court Claim 2928 of 2023 which was commenced on 27 October 2023 on behalf of the Defendant and which also relates to the Estate (Other Proceedings).*
4. *The Claimant seeks orders and declarations in respect of the Estate.*
5. *On 2 August 2023 the Defendant filed a statement in support of the Reseal.*
6. *On 27 October 2023 the Defendant filed a statement in support of the Other Proceedings.*
7. *The Sworn Statements referred to hereinbefore are contradictory.*
8. *The Defendant's sworn statement in support of the Reseal included falsities and misleading statements relating to the assets held by the Estate in Vanuatu.*
9. *The falsities referred to may result in adverse financial consequences or other legal liability for the Estate and the Claimant.*

WHEREFORE THE CLAIMANT SEEKS:

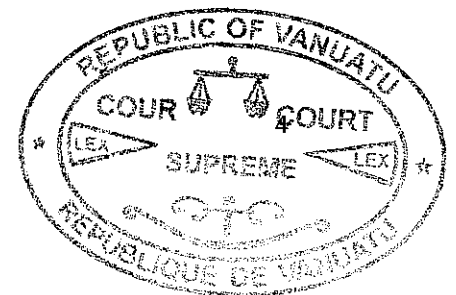
² *API Ltd v Klatt* [2024] VUCA 25 at [5].

³ *API Ltd v Klatt* [2024] VUCA 25 at [6].

⁴ *API Ltd v Klatt* [2024] VUCA 25 at [7].



1. *An order that the resealing of the Letters of Administration by the Supreme Court of Vanuatu on 31 August 2023 be revoked pursuant to Rule 24(a) of the Succession of Probate and Administration Regulation 1972.*
 2. *Any further orders as this court sees fit.*
 3. *Costs.*
12. The Claim is disputed: Defence filed on 25 June 2024.
13. Disclosure orders were sought and obtained on 17 January 2024 and 8 May 2024 in earlier proceedings, namely, *API Limited v Klatt*; Civil Case No. 2928 of 2023 ('CC 23/2928'): *Klatt v API Ltd (10825) [2024] VUSC 165*.
14. The disclosure orders were appealed.
15. On 23 July 2024, I issued Minute and Orders staying the proceeding in CC 23/2928 and the disclosure orders dated 17 January 2024 and 8 May 2024 pending the determination of the appeal case and the determination of the present matter CC 24/926.
16. By judgment dated 16 August 2024, the Court of Appeal dismissed the appeal against the disclosure orders: *API Ltd v Klatt [2024] VUCA 25*. It held as follows in its judgment at [11]-[14]:
11. *The primary Judge recorded that there is a strong supposition that, at the time of his death, Mr Smith was the beneficial owner holding a controlling interest in Waterford and in a practical sense in API. There is extensive material which is capable of showing that he had a significant role in relation to API, both as a chairman of its board, and a decision maker in relation to its activities. He appears to have had a significant role in the appointment of staff and in the conduct of its business.*
 12. *It can now be taken, for the purposes of this application for leave to appeal, that he had either a controlling or very significant interest in API at the time of his death and that, in order to satisfactorily administer the Will, Mr Klatt is both entitled to and indeed obliged to enquire into the assets of Mr Smith's estate at his death including his interest in API.*
 13. *Mr Klatt has made approaches to the Applicants to provide information concerning API's shareholdings and membership at the time of his death. He has been denied any information at all. API and the other Applicants for leave to appeal have simply asserted firstly that Mr Conway is the beneficial holder of all of the interest and shares in API, and that therefore it cannot be shown that Mr Smith at the time of his death had any interest in API. Further than that, they have simply relied upon Section 125A of the Act to refuse to provide any records of API to Mr Klatt despite his requests to do so.*
 14. *Inevitably, in those circumstances, Mr Klatt applied to the Court for an order for disclosure of those records. That application has resulted in two orders of the Court. The first was made on 17th January 2024 directing the disclosure of significant documentation by each of the applicants*



and the second by order 8th May 2024 in which the order of 17 January 2024 was moderated to some extent but otherwise maintained.

17. The Court of Appeal stated the primary question in the matter before it, in its judgment at [17], and then its conclusions at [28]-[29] and [31]-[32] as follows:

17. The primary question, therefore, which leads to the application for leave to appeal is whether the disclosure order could have been, and should have been, made by the primary judge.

...

28. We do not see in Section 125A any intention to impose a more restrictive obligation upon a court than existed previously. More specifically to confront the applicants' contentions, there is no foundation for the Applicants' contention that the Court is prohibited from exercising a power to make a disclosure order absolutely, or in any particular circumstances. The contrary is the case. Section 125B specifically contemplates that in the course of proceedings a court may make orders with respect to the protection of company records which are otherwise confidential by determining whether the disclosure to be made is in open court or otherwise, and including proceedings for the purpose of determining the rights or obligations of officers or members of the international company.

29. That is precisely the purpose of the current proceedings.

...

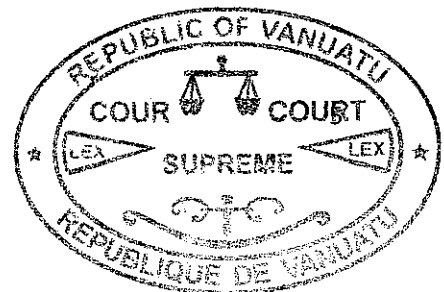
31. In relation to the second ground upon which leave to appeal is sought, in our view there is simply no merit in that ground in particular having regard to the fact that Mr Conway has made a public assertion through his sworn statement that he is the sole shareholder of API. As we have noted, there is significant material which suggests that Mr Smith was either the sole shareholder or a significant shareholder of the API shares, and that he was actively involved in its management up to the time of his death. Once Mr Conway has chosen to positively assert the state of affairs as to membership in API by asserting his sole shareholding, it is obviously both appropriate and necessary for the Court in those circumstances to require disclosure for the purposes of determining the state of affairs at the time of and prior to Mr Smith's death, and then to explore the extent to which or the manner in which Mr Conway came to be the sole shareholder of API (s.125B(i)). It would be an affront to justice, in such circumstances, to preclude the court from having the power to direct the disclosure which it has directed.

32. Accordingly, although we consider that the matters specifically argued on behalf of the Applicants do warrant a grant of leave to appeal from the decision and the orders made by the primary judge on 8 May 2024, we dismiss the appeal...

[emphasis added]

18. On 30 April 2025, Mr Klatt filed the Application of the Defendant requesting further and better particulars of paras 7-9 of the Claim [copy attached to Defendant's Further Submissions filed on 21 August 2025 – **Annexure A – "A"**].

19. By response dated 9 May 2025, Mr Morton provided particulars [copy attached to Defendant's Further Submissions filed on 21 August 2025 – **Annexure A**].



20. The present matter CC 24/926 is listed for trial from 25-28 November 2025.

21. Mr Klatt has now applied for an order striking out the Claim.

22. I now determine the Application.

B. The Law

23. Section 3 of the Succession, Probate and Administration Regulation 1972 (UK) (the 'Queen's Regulation') provides as follows:

3. (1) Subject to the provisions of this Regulation and to any rules made hereunder the court shall have jurisdiction in contentious and non-contentious probate matters and proceedings and in the granting or revoking of probate of wills and administration of estates of persons dying domiciled or leaving property in the New Hebrides.
- (2) *The jurisdiction vested in the court by the provisions of the preceding subsection shall, subject to any modifications effected by any rules made hereunder, be in conformity with the law and practice in force in England on the 1st day of January 1964.*
- (3) *The Trustee Act shall apply in relation to all matters herein.*

[emphasis added]

24. Section 24 of the Queen's Regulation provides as follows:

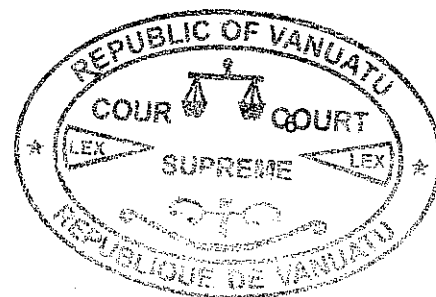
24. The court may, at any time, upon the application of any person interested in the estate or of his own motion on the report of the Registrar –
 - (a) revoke the administration already granted; or
 - (b) *order the administrator to execute a further or additional bond in such sum, with or without sureties, as the court may direct; and upon default may remove the administrator and appoint another in his place, with power to sue or be sued upon any contract made by the removed administrator; or*
 - (c) *order that the liability of any surety to any administration bond be reduced to such amount as the court in the circumstances of the case thinks reasonable.*

[emphasis added]

C. The Application and Submissions

25. By the Application, Mr Klatt is applying for an order that the Claim be struck out and for the costs of the Application and the proceeding on an indemnity basis.

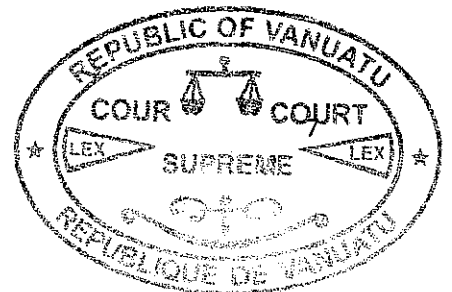
26. The sole ground of the Application is that the Claim has no reasonable prospect of success for the following reasons:



- a) That the case against Mr Klatt is based on a single factual allegation – namely, that when he swore his resealed sworn statement on 2 August 2023, that he did not know whether the deceased had assets in Vanuatu. It is claimed that this fact establishes that the following paras 3-5 of his resealed sworn statement are false and misleading:

3. *The deceased left property in Vanuatu.*
4. *An inventory of all property of the estate I now know about is attached and marked "C." If I find out about any other property of the deceased, I will tell the Court about it.*
5. *The estate has estimated net assets of AUD \$62.8 million, per the latest financial statements available.*

- b) However, Mr Morton offers no direct evidence that Mr Klatt “did not know” (as alleged) but in any event, such evidence is impossible to obtain as it is in Mr Klatt’s mind;
- c) Also, Mr Morton offers no evidence of admissions by Mr Klatt that he “did not know”;
- d) That the last page of Mr Klatt’s sworn statement filed on 27 October 2023 in CC 23/2928 does not contradict any part of the resealed sworn statement for a number of reasons advanced in the submissions;
- e) The alleged false and misleading statements are not such that, if found proven, would result in the Court revoking the resealed because if it is proven that Mr Klatt did not know whether the deceased left assets in Vanuatu, it was an innocent mistake because his sworn statement filed on 27 October 2023 contains a great deal of evidence from which he could honestly have concluded that the deceased had left assets in Vanuatu;
- f) Even if the Court finds that Mr Klatt made one or more of the false and misleading statements that are alleged, the resealed should not be revoked and the Claim struck out on that basis;
- g) The Claim does not allege that the deceased did not have assets in Vanuatu and so Mr Morton cannot prove in this proceeding that the deceased did not leave assets in Vanuatu;
- h) The purposes of the requirement that the deceased has left property in Vanuatu is to establish jurisdiction in the Supreme Court of Vanuatu and Mr Morton does not intend to prove that the deceased did not leave property in Vanuatu, therefore the Court’s jurisdiction and the due and proper

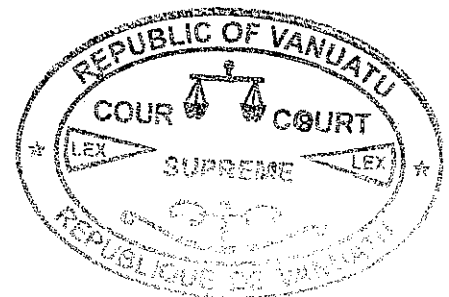


administration of the estate for the benefit of the beneficiaries of the will are not threatened by the mistake, if proved;

- i) Mr Morton makes no allegations that Mr Klatt has failed in his duty to administer the deceased's estate which has assets in a number of countries and which he has been carrying out for a considerable time due to the problems experienced in Vanuatu; and
- j) The test for revocation is whether the due and proper administration of the estate has been shown to have been put in jeopardy by the administrator but Mr Morton's case, if proven, does not satisfy this test (which test is set out in *Mavrideros v Mack* [1998] NSWCA 80 and *Riccardo v Riccardi* [2013] NZWC 1655).

27. It was also submitted in the Defendant's Further Submissions filed on 21 August 2025 as follows:

- a) That an administrator's knowledge of the assets of the estate that the legislation and the Court in its probate jurisdiction require him or her to obtain is knowledge that is derived through inquiry. Mr Sugden submitted that the Claim cannot succeed because the Court's previous ruling as to disclosure and Mr Klatt's evidence make it clear that he had derived knowledge of the estate assets in Vanuatu from the exhaustive fulfilment of his duty to inquire into the estate assets and such knowledge was what he filed as his reseal sworn statement in the prescribed form;
- b) That the Claim focuses on Mr Klatt's knowledge of facts concerning the estate, not the facts themselves. That is, the Claim, as particularized, does not allege that paras 3-5 of the reseal sworn statement and its annexure C are false and misleading for the reason that the deceased had not left any assets in Vanuatu and so it will not (and cannot as it is not pleaded) be proved in this proceeding that the deceased left no assets in Vanuatu;
- c) It follows that, even if Mr Morton succeeds in proving the basis of the alleged falseness (the lack of knowledge) he will not have proved that there was no basis for the Court to have assumed jurisdiction in the Probate Case. He submitted that the Court will simply not know at the end of the trial whether the deceased left assets in Vanuatu (in which case jurisdiction was correctly assumed in the Probate Case) or not (in which case jurisdiction would not have been correctly assumed);
- d) Because the claimant bears the onus of proof, the Court will have to assume in these circumstances (i.e. no attempt to prove that there were no estate



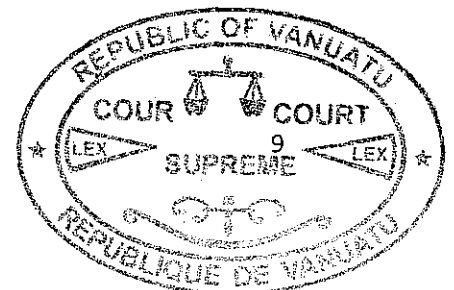
assets in Vanuatu) that the Court correctly assumed jurisdiction to grant the reseal and therefore that the Court was not misled in making the grant of reseal;

- e) That the question then arises as to whether by swearing a statement that he knew of estate assets in Vanuatu when he did not know (allegedly), he demonstrated that he was not a fit and proper person to administer the estate therefore should not be allowed to continue to do so;
- f) However, there is no allegation that Mr Klatt knowingly made a false and misleading statement. Nor is there any allegation that Mr Klatt was negligent in making a false and misleading statement;
- g) Mr Morton is therefore not excluding and cannot seek to exclude in this proceeding (because of the lack of pleading) the possibility that, if he did not know what he swore he knew, it was an honest mistake that was not negligently made;
- h) An honest and not negligent mistake in swearing something was true when it wasn't will not make the swearer not a fit an proper person to be administering the estate of a deceased person;
- i) In the circumstances of this case, including the disclosure orders approved by the Court of Appeal, the Court would consider that Mr Klatt's administration of the estate to not be ended on the basis of an honest mistake that did not establish a mistaken or in any way wrongful assumption of jurisdiction by the Probate Court and left undisturbed the presumption that the reseal had been properly granted; and
- j) The Claim as pleaded cannot, if all factual allegations are proved, establish that the Court should not have assumed jurisdiction to grant the reseal, and it would clearly be contrary to the real objective of the Court in its probate jurisdiction of ensuring the due and proper administration of the estate to revoke the grant of reseal in the current circumstances.

28. In response, it was submitted for Mr Morton and the Interested Parties as follows:

- a) That all that is sought in the Claim is that the reseal be revoked, not the removal of Mr Klatt as Administrator;
- b) It was submitted that the issue is as follows [Submissions filed on 25 August 2025, at [45]]:

45. *The issue is whether the Supreme Court of Vanuatu actually had jurisdiction to grant the Reseal.*



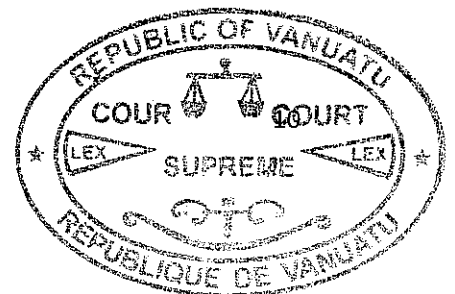
- c) And again, that the issue is as follows [Submissions filed on 25 August 2025, at [122] and [124]]:

122. *The issue is whether the Supreme Court of Vanuatu had, by reason of the unresolved dispute as to who the beneficial owner of the shares in API was had jurisdiction to actually make the grant.*

...

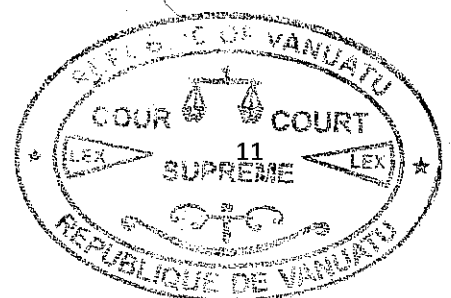
124. *The attack is on the jurisdiction of the Court.*

- d) That there is an attack on the way in which Mr Klatt as Administrator reached the conclusion that there was evidence that pointed to a conclusion that the deceased was the beneficial owner, swore inconsistent statements and failed to act properly but ultimately, that would be a matter for the Court that granted to him letters of administration with the will annexed (the Queensland Court), and all that is sought is a revocation of the reseal;
- e) That the reason the 4 named executors of the Will were removed is due to disagreements between them as to the deceased's assets in Vanuatu and in particular, the beneficial ownership of the shares in API therefore Mr Klatt could not possibly have made the unequivocal assertion that the deceased left property in Vanuatu;
- f) That the reseal sworn statement, including its attachment "C", was internally inconsistent between the statement asserting that there were assets in Vanuatu to at least the value of the shares being the subject of the disclosure of the assets. Hence, at best, Mr Klatt was drawing conclusions from the financial statements of other companies, not API;
- g) That the assertion as to the possession of the assets within the jurisdiction in its unqualified form was incorrect for the reasons set out in the submissions;
- h) That both as an experienced succession law lawyer and an officer of the Court in both Queensland and Vanuatu, that it was incumbent on Mr Klatt to make full and frank disclosure about whether, and if so, how he concluded that shares in API were part of the deceased's estate and to identify the available evidence that was contrary to his unequivocal assertion that shares in API formed part of the estate. However, he did not do so therefore vitiates the reseal order and the reseal should be set aside then there should be a contested hearing as to who the true beneficial owner of the shares in API is, in other words, that there should be a declaration from a competent Court as to whether there are assets of the estate in Vanuatu;
- i) That Mr Klatt stated in para. 63 of his 26 October 2023 sworn statement in CC 23/2928 that having reviewed the docs, "... *there is enough for the strong*



supposition that Mal had a controlling interest in API which also points to him having beneficial ownership” but that the difficulty with this conclusion is that it is based on a number of unidentified documents;

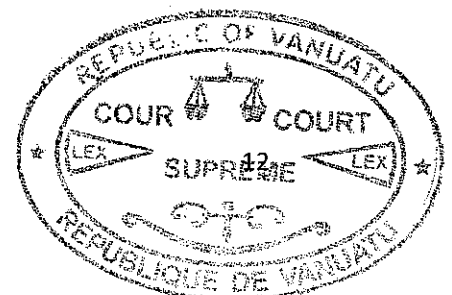
- j) That para. 3 of the reseal sworn statement cannot possibly stand with the 26 October 2023 sworn statement in CC 23/2928 that there is a “strong supposition” that the deceased had a controlling interest in API which also points to him having beneficial ownership;
 - k) That Mr Klatt exceeded his power as Administrator by not speaking to Mr Morton or Mr Conway but drawing assumptions based on conversations with a number of people and also not producing the documents relied on hence usurping the Court’s jurisdiction to decide himself the controversy between the 4 named executors of the Will as to who the beneficial owner of the API shares is;
 - l) That the Application is unconscionably late – 15 months after the Claim was filed, where Mr Klatt has conceded that there are “issues” requiring resolution by the Court and the matter is listed for trial in November 2025. That this alone is ground for the Application to be dismissed;
 - m) That Mr Klatt’s concession in his memorandum filed on 5 June 2025 that there are “issues” requiring resolution by the Court is of itself, grounds for dismissing the Application. That there are real factual issues to be ultimately tried in this case, fundamentally as to whether this Court had jurisdiction to reseal the Queensland probate;
 - n) That the Application can only succeed if there is no reasonable cause of action disclosed in the Claim; and
 - o) That it cannot be said that there is no reasonable cause of action in the Claim.
29. Mr Loughton submitted that there actually must be property left in Vanuatu for the Court to have jurisdiction to grant reseal, that the Court cannot have partial jurisdiction. That Mr Klatt’s conclusions in para. 63 of his 23 October 2023 sworn statement in CC 23/2928, including his use of the words, “*strong supposition*” and “*points to*” are all triable issues, which need to be put in cross-examination to Mr Klatt. In addition, that Mr Klatt’s enquiry as to who owns the shares in API is properly a matter for the Court therefore he has usurped the jurisdiction of the Court (Vanuatu and Queensland), and that this is also a triable issue. He submitted that the reseal should not have been granted because there were no assets in the jurisdiction hence the Court did not have jurisdiction, hence the grant of reseal ought to be set aside.



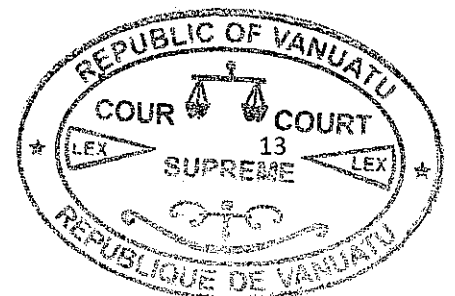
30. Mr Loughton also submitted that the Claim was not the best pleading but was pleaded on the information then available. He stated that Mr Morton was hoping to amend the Claim, but the Claim as pleaded and the particulars provided are sufficient. He submitted that the cause of action is that the Court had no jurisdiction to grant the reseal, even though there is no express pleading in the Claim that the Court was "without jurisdiction". He stated that Mr Morton could amend the Claim in 7 days.
31. In reply, Mr Sugden submitted that it would be unconscionable to allow Mr Morton now to amend the Claim. He stated that he did not have any instructions whether an application to amend the Claim would be resisted but that the issue whether the deceased left property in Vanuatu is already in issue in CC 23/2928 and is what that proceeding is all about. He submitted that the Claim does not allege that there were no assets in Vanuatu, hence it does not allege any basis for the Court to revoke the reseal for want of jurisdiction. He submitted that the Claim as it stands, alleging that Mr Klatt did not know if the deceased left assets in Vanuatu, is insufficient for the remedy sought of revocation of the reseal.

D. Consideration

32. Mr Loughton submitted that the Application was made unconscionably late. There was no caselaw cited in support.
33. It was also submitted that Mr Klatt has conceded in his memorandum filed on 5 June 2024 that there are "issues" requiring resolution by the Court hence that of itself is grounds for dismissing the Application. I do not agree. It would be to put form over matter for the Application to be dismissed on this ground without considering the merits of the Application.
34. Disappointingly, counsel on both sides of the dispute argued the Application as if they were making their closing submissions at the end of the trial. That is, a large portion of their submissions concerned matters which can only be determined after trial.
35. However, the Court cannot assess the evidence or make findings of fact on this strike-out application which is being heard prior to trial.
36. I consider that the following submissions concerned matters for determination after trial therefore did not assist me in determining the Application:
- a) On behalf of Mr Klatt, at paras 26(b)-(f), 27(a) and 27(e)-(j) above; and
 - b) On behalf of Mr Morton and the Interested Parties: at paras 28(e)-(k) above.



37. Within those submissions, the submission summarised at para. 28(i) above purports to be a submission pointing out a 'difficulty' with Mr Klatt's conclusion in para. 63 of this 26 October 2023 sworn statement in CC 23/2988. However, such submission inviting the Court to assess the quality of the evidence should only be made in the matter in which that sworn statement was filed (CC 23/2988), not for the Court in the present matter.
38. In addition, the submission summarised at para. 28(i) above overlooks that the purpose of that sworn statement in CC 23/2928 was to support Mr Klatt's application for disclosure orders. The Court granted that application and made disclosure orders dated 17 January 2024 and 8 May 2024. The Court of Appeal upheld those orders. The Court of Appeal having dealt with the disclosure orders, it is not open for the Court in the present matter to assess the quality of that evidence as it is being invited to.
39. I turn now to deal with the submissions about amending the Claim.
40. There was no application to amend the Claim before the Court. No such application has been heard.
41. Mr Loughton submitted, however, that the Claim as pleaded and particularised is sufficient and that even though there is no express pleading in the Claim that the Court was "without jurisdiction", that a reasonable cause of action is disclosed in the Claim.
42. The Court of Appeal held in Noel v Champagne Beach Working Committee [2006] VUCA 18 that the Court has the power to strike out a claim on the grounds that, "*there is no reasonable cause of action or that it is frivolous, vexatious or an abuse of process.*" However, the jurisdiction should be exercised sparingly hence only in a clear case where, "*the claimant's case must be so clearly untenable that it cannot possibly succeed.*"
43. A reasonable cause of action must be disclosed in the Claim otherwise the Claim may be struck out.
44. Is there a reasonable cause of action disclosed in the Claim?
45. Mr Loughton submitted that the cause of action in the Claim is that the Court had no jurisdiction to grant the reseal hence it ought to be set aside.
46. It is pleaded in the Claim that Mr Klatt's reseal sworn statement included, "... *falsities and misleading statements relating to the assets held by the Estate in Vanuatu.*"



47. In Mr Loughton's submissions at [45] and [122], the pleadings give rise to the following issue:

45. *The issue is whether the Supreme Court of Vanuatu actually had jurisdiction to grant the Reseal.*

...

122. *The issue is whether the Supreme Court of Vanuatu had, by reason of the unresolved dispute as to who the beneficial owner of the shares in API was had jurisdiction to actually make the grant.*

48. It is submitted that Mr Klatt could not possibly have made the unequivocal assertion, in his reseal sworn statement, that the deceased left property in Vanuatu due to the unresolved dispute between the 4 named executors of the Will as to the deceased's assets in Vanuatu, and particularly the beneficial ownership of the shares in API.

49. Mr Loughton submitted that Mr Klatt had exceeded his role as Administrator and usurped the Court's jurisdiction by purporting to resolve the dispute as to the beneficial ownership of the shares in API. He submitted that Mr Klatt had set himself up as 'judge, jury and executioner'. Therefore, in his submission, Mr Klatt should not have made his unequivocal assertion in his reseal sworn statement that the shares in API formed part of the deceased's estate, hence the Court did not have jurisdiction in the probate case. He submitted that there should first be a contested hearing as to who the true beneficial owner of the shares in API is before a grant of reseal may be sought.

50. The relief sought is an order pursuant to s. 24 of the Queen's Regulation that the Court revoke the administration already granted.

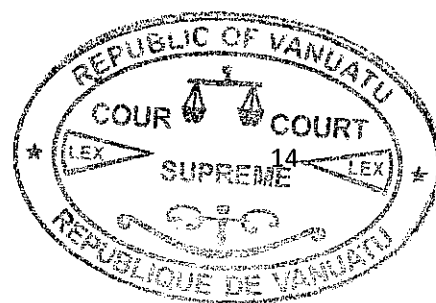
51. It goes without saying that it is only the Queensland Court which can revoke the administration already granted to Mr Klatt as it granted him the Letters of Administration with the Will attached.

52. It was submitted that all that is sought is revocation of the grant of reseal.

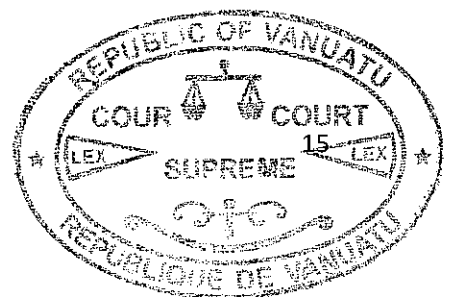
53. There is no express provision in the Queen's Regulation for revocation of a grant of reseal.

54. In the absence of a provision in the Queen's Regulation as to revocation of a grant of reseal, such order is being sought under s. 24 of those Regulations.

55. Mr Loughton submitted at [45] of his submissions that the issue is whether the Supreme Court of Vanuatu actually had jurisdiction to grant the reseal.



56. The Supreme Court of Vanuatu has jurisdiction in probate matters, and hence to grant reseal, where the deceased has left property in Vanuatu: s. 3 of the Queen's Regulation.
57. First, there is no pleading in the Claim and particulars that the reseal statement is false and misleading for the reason that the deceased had not left any assets in Vanuatu.
58. Therefore, it will not (and cannot, as it is not pleaded) be proved in the present proceedings CC 24/926 that the deceased left no assets in Vanuatu.
59. Secondly, the focus of the Claim is on Mr Klatt's knowledge of facts concerning the estate, not the facts themselves.
60. The focus being Mr Klatt's knowledge, and because it cannot be proved (as it has not been pleaded) that the deceased left no assets in Vanuatu, even if Mr Morton succeeds in proving the basis of the alleged falseness (Mr Klatt's lack of knowledge), he will not have proved that the deceased left no assets in Vanuatu.
61. The Court will therefore simply not know at the end of the trial whether the deceased left no assets in Vanuatu. Hence the Court will have to assume that the Court was not misled to grant the reseal and therefore correctly assumed jurisdiction to grant the reseal.
62. For the foregoing reasons, I agree that the ground of the Application is made out that the Claim has no reasonable prospect of success.
63. The submissions opposing the Application also overlook the particular circumstances of this matter where it is the Queensland Court which ordered the removal of the 4 executors of the Will and appointed Mr Klatt as the Administrator. Subsequently, Mr Morton and the Interested Parties denied Mr Klatt information about API hence he sought the disclosure orders in Vanuatu: API Ltd v Klatt [2024] VUCA 25 at [13]-[14] and [31]-[32]. With respect, the assertions that Mr Klatt has unilaterally decided the dispute between the 4 named executors of the Will as to the deceased's assets in Vanuatu, and particularly the beneficial ownership of the shares in API, also have no prospect of success as they are inviting this Court to draw conclusions contrary to what the Court of Appeal held in API Ltd v Klatt [2024] VUCA 25.
64. Result and Decision
65. The Application is granted.
66. The Claim is **struck out**.



67. Costs shall follow the event. The Claimant is to pay the Defendant's costs of the Application and the proceeding as agreed or taxed by the Master. Those costs are sought on an indemnity basis hence the Defendant is to file and serve submissions **by 4pm on 14 November 2025** as to the basis for seeking indemnity costs.
68. The Claimant and Interested Parties are to file and serve submissions in response **by 4pm on 28 November 2025**.
69. Any submissions in reply **by 4pm on 5 December 2025**.
70. The Court will issue its decision on the papers after that as to whether costs are to be paid on the standard or indemnity basis.
71. The 25-28 November 2025 listings are **vacated**.

**DATED at Port Vila this 3rd day of November, 2025
BY THE COURT**

VM Trief
Justice Viran Molisa Trief

