

**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

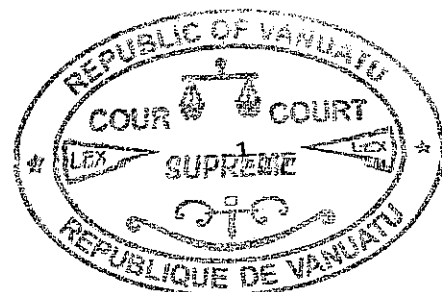
AND: Waterford Limited (3375)
Second Interested Party

AND: Mark William Conway
Third Interested Party

Date: 31 December 2024
Before: Justice V.M. Trief
In Attendance: Claimant – Mr N. Morrison
Defendant – Ms L. Raikatalau
First Interested Party – Mr J. Malcolm
Second & Third Interested Parties – Mr M. Hurley

DECISION AS TO DEFENDANT'S APPLICATION TO CONSOLIDATE PROCEEDINGS

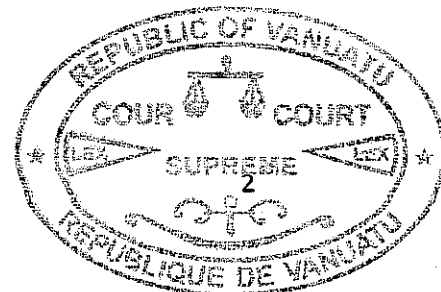
1. On 28 August 2024, the Defendant Michael Karl Klatt filed Application to Consolidate Proceedings, that is, the present proceedings CC 24/926 with *Klatt v API Limited*; Civil Case No. 2928 of 2023 ('CC 23/2928') (the Application').
2. The Application is made pursuant to rule 3.4 of the *Civil Procedure Rules* ('CPR') which provides as follows:



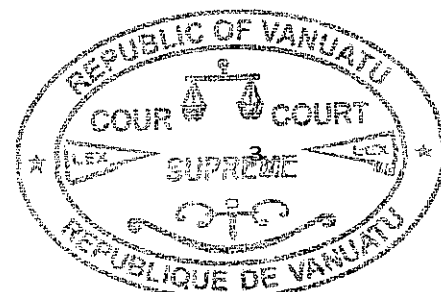
3.4 The court may order that several proceedings be heard together if:

- (a) the same question is involved in each proceeding; or
- (b) the decision in one proceeding will affect the other; or
- (c) or any other reason the court considers the proceedings should be heard together.

3. The grounds for the Application are as follows: (i) that the Court has the power to make the orders sought; (ii) that the Court has an overriding duty to efficiently manage cases where both claims are concerned with the same subject matter being the estate of Malcolm Roy Smith (deceased), the material filed in CC 23/2928 will be used in the present proceeding; the same question arises in each proceeding as to what constitutes Mr Smith's estate, the decision in the present proceeding will affect CC 23/2928 and no real or apparent prejudice will be suffered from a consolidation of the proceedings, and (iii) statements made by the Court of Appeal in CAC 24/1757.
4. The Claimant and the Interested Parties opposed the Application by submissions filed on 9 December 2024. On 17 December 2024, the Defendant filed submissions in reply.
5. The first ground of the Application sets out that the Court has the power to make the orders sought. However, rule 3.4 of the CPR includes the word, "may" hence it is a matter for the discretion of the Court whether or not to exercise the power.
6. For the reasons which follow, I **decline** to make the orders sought:
 - (a) Mr Klatt's Claim in CC 23/2928 arises from his duty as Administrator of Mr Smith's estate to enquire into the assets of that estate hence he seeks *inter alia* a declaration that Mr Smith was the ultimate beneficial owner of the First Interested Party API Limited (10825) ('API') at the time of his death. Accordingly, the issues posed by the Claim include whether or not the beneficial ownership of API is an interest that Mr Smith held at the time of his death and if yes, whether or not this amounted to a revocable trust held by the Second Interested Party Waterford Limited (3375) in Mr Smith's favour during his lifetime, which upon his death became irrevocable and subject only to beneficiaries' rights and permissions – see Klatt v API Ltd (10825) [2024] VUSC 165 at [97]-[98];
 - (b) However, Mr Morton's Claim in the present proceeding is seeking to have the resealing of Mr Klatt's Letters of Administration by the Court on 31 August 2023 revoked pursuant to Rule 24(a) of the *Succession of Probate and Administration Regulation 1972* on the basis that the grant was obtained unlawfully;



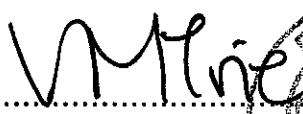
- (c) I conclude therefore that the same question is not involved in each proceeding: rule 3.4, CPR;
- (d) I stated in the Minute and Orders dated 23 July 2024 in CC 23/2928 that if Mr Morton was successful in the present proceeding CC 24/296 and the 31 August 2023 Orders were revoked, that Mr Klatt would no longer have any standing (*locus standi*) in CC 23/2928 therefore I stayed CC 23/2928 pending the determination of CC 24/296;
- (e) It is asserted that the Court has an overriding duty to efficiently manage cases where both claims are concerned with the same subject matter being the estate of Malcolm Roy Smith (deceased). Both proceedings concern Mr Smith's estate however as stated above, the same question is not involved in each proceeding;
- (f) Furthermore, CC 23/2928 has already been stayed. I considered that to be the most efficient way to manage both cases – see the Minute and Orders dated 23 July 2024 in CC 23/2928;
- (g) The decision in the present proceeding will affect CC 23/2928. For that reason, I stayed CC 23/2928 pending the determination of CC 24/296. There has not been any appeal against the Orders dated 23 July 2024. Instead, Mr Klatt is seeking the consolidation of the two proceedings. This is an abuse of process as by doing so, he is seeking to circumvent the Orders dated 23 July 2024 at [1](g) and [2](a);
- (h) For the foregoing reasons, I fail to see the utility of consolidating the proceedings;
- (i) It is asserted that the Claim in the present proceeding relies on the material filed in CC 23/2928 and that the material filed in CC 23/2928 will be used in the present proceeding. The more appropriate and usual order, were any to be made, would be that evidence in one proceeding be the evidence in the other;
- (j) Contrary to what is asserted in the Application, I consider that there would be prejudice suffered from a consolidation of the proceedings. I agree with Mr Morton's submissions filed on 9 December 2024 in this regard; and
- (k) I also agree with Mr Morton's submissions that a consolidation order would controvert the Court of Appeal's suggestion in *Api Ltd v Klatt* [2024] VUCA 25 at [33]. In that paragraph, the Court of Appeal stated that any variation of the suspension order is a matter for the primary judge and recognised that disclosure could be ordered, "*depending on, the resolution of the resale proceedings challenge*" that is, the resolution of



CC 24/926. CC 24/926 having to be determined first, there is no utility in consolidating CC 24/926 and CC 23/2928.

7. For the reasons given, the Application is **declined and dismissed**.
8. Costs must follow the event. The Defendant is to pay to the Claimant and the Interested Parties the costs of the Application fixed summarily in the sum of VT90,000 to the Claimant, VT30,000 to the Second and Third Interested Parties, and VT30,000 to the First Interested Party **by 4pm on 31 January 2025**.
9. This matter is listed for Conference **at 1pm on 3 April 2025**.

**DATED at Port Vila this 31st day of December 2024
BY THE COURT**


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Justice V.M. Trier

