

E-Mail Express

[E-mail Story](#) | [Print-Friendly Version](#)

Name:

Company:

E-mail:

Phone:

Subscribe

Avoid harvest disputes

Tuesday, May 25, 2004

MATT EISENBERG
SPECIAL TO THE BUSINESS JOURNAL

What happens under California law if a grape contract contains a brix or other maturity target, and the winery seeks to delay for increased sugars or flavors?

The first option is for the grower to deliver anyway. The contract would support this, and its provisions are paramount when it comes to any later dispute.

If the winery refuses to pay, the grower could seek to enforce the statutory grower's lien, which provides the grower with preferred treatment so long as the wine is still at the winery. It is important to note that this lien disappears once the wine is shipped from the winery. The grower should require notification -- or, better yet, payment -- prior to transporting the wine.

A problem with the "deliver first, ask questions later" strategy is the "implied warranty of fitness for a particular purpose" under California's Uniform Commercial Code. This means that a grower must provide grapes of suitable quality for the wine that winery and grower knew was going to be made at the time of the contract. This warranty is read into every contract unless explicitly waived.

One recent case involved a grower that had contracted with a winery for 80th-percentile-quality grapes. Early on, the grapes were acceptable. But then quality started to deteriorate. The winery attempted to work with the grower to improve its practices to no avail. The grower simply did not believe it had contracted for such practices.

The grower tried to deliver. The winery rejected the shipment and immediately demanded arbitration under the contract. The arbitrator ultimately ruled that the grower breached the implied warranty of fitness, and the winery not only was relieved from future evergreen obligations but received the costs of the arbitration as well.

Grower's second option

The second option is for the grower to comply with the winery by waiting and dropping fruit. However, what does a grower do if this dropped fruit represents a major financial loss? Because the law will only enforce that which is reasonably certain, the grower must quantify the lost fruit and demand payment for the fruit that would have been delivered upon reaching the targets in the contract.

Again, implied warranties will be relevant. If the dropped fruit represents lower quality than was called for in the contract, then the grower will lose. But if the winery was seeking enhanced quality, the grower will have a claim to the contract price for the grape quantity before the fruit was dropped.

Accept or reject?



Los Angeles, Seattle, Portland, Las Vegas



Less stress, FLY STS!

Fly Nonstop
to and from
Wine Country

Horizon Air

horizonair.com
1-800-547-9308

Charles M. Schulz
Sonoma County Airport (STS)

Book of Lists **New!**



Find the data you need on North Bay companies **NOW!**
[Click here to begin...](#)

If the grower delivers fruit before the winery is satisfied, should the winery accept it or reject it? The answer is rejection in almost all cases, but the winery must document it carefully. A lot of wineries are afraid to take this step. However, if they do not, they waive their chance of successfully stating a claim based on fruit quality.

Once a winery knows that the fruit will not be satisfactory -- even if it learns it only at the time of delivery -- the winery should notify the grower in writing of its intent to reject or actual rejection and its rationale.

In the event of a demand for arbitration or a lawsuit, the court or arbitrator will first look at the contract for provisions regarding brix or other maturity targets and any detail on viticultural practices. The less said on these issues the more complicated and expensive a dispute later becomes because of the need to determine what the contract really meant.

The court or arbitrator will also look at facts supporting the implied fitness warranty. Did both of the parties know where the fruit was intended to go? Were the grapes adequate to fulfill such needs?

Next, the winery and grower's course of dealing with one another will be reviewed. Was there a history of difficulty? Were the communications clear? Every e-mail and telephone conversation can be the basis for a legal argument. Stay just as particular on your relations with one another as you might on any other aspect of your business.

Industry customs are also the basis for decision in any dispute. What your competitors, neighbors, and friends are doing is not only practical but also relevant and persuasive in a harvest dispute.

Good relations between winery and grower come first. However, a good contract will help the parties resolve their differences more expeditiously and cost-effectively so they can get back to what they do best: growing grapes and making wine.

•••

Matt Eisenberg is a partner with Dickenson, Peatman & Fogarty in Napa; 707-252-7122; mje@dpfnapa.com.

Copyright 2008 - North Bay Business Journal
427 Mendocino Ave., Santa Rosa, CA 95401
Phone: 707-521-5270 - Fax: 707-521-5269