

whilst reducing the requirements for artificial lighting.

Cross ventilation

Passive cross ventilation is particularly important during vintage in order to clear excess carbon dioxide from internal spaces. Considered placement of large doors required for vehicle access also enables a natural flow of outside air through the building.

Thermal mass

In the case of Medhurst the building was embedded into the side of an existing slope on the property. This provided an opportunity to create a subterranean barrel store, surrounded on three sides by earth including a green/earth roof. The added thermal mass helps maintain a constant 14°C internal temperature, optimal conditions for barrel storage meaning mechanical cooling is hardly ever used.

Materiality

Materiality is integrated with the overall building design, ensuring that nothing is superfluous and each element has

a multitude of uses. For example, the thermal mass of a retaining wall frames a cellar and reduces the requirement for mechanical cooling. These elements of the design are co-ordinated with the client, consultants and need to be specific to the site and context.

We constantly review available building materials and, where possible, specify locally-sourced materials to ensure sustainable outcomes. In the case of wineries, durability and low maintenance are important considerations, a paired-back material palette, concrete, earth, steel, etc.

We also take into account the commercial consideration of building maintenance and lifecycle costings. Being a commercial environment the materials need to be robust with minimal on-going upkeep and be easy to clean and maintain.

Client testimonials

Simon Steel, winemaker, Medhurst

The Folk Architects trademark seems to be flow. Not only in the design of our winery here at Medhurst, but also the

ease of use as a winemaking facility of the highest order.

From fruit receipt to the weighbridge and into the fruit chilling room, to the use of gravity for pressing grapes and must.

The central work area is both spacious and well drained, ensuring a clean working environment necessary to make the detailed and pure, elegant wines we are chasing.

The barrel room, nestled deep into the building and underground ensures the barrels remain at a constant 14°C with minimal need for cooling.

Tom Carson, winemaker, Yabby Lake

One of the great attributes of the winery during harvest is that the whole cellar—not just the barrel hall and fruit receipt areas but also the fermentation hall and where we crush, de-stem and press—is all temperature controlled. So, for example, it might be a hot summer day outside, and inside the winery, the space allows us to press Chardonnay in ideal conditions—a cool and calm environment. **GW**

Distribution agreement lessons from an SA Supreme Court case

Mark Hamilton points to some lessons for wine producers and distributors alike in their distribution dealings from a recent South Australian court case involving Paxton.



In November 2018, the Supreme Court of South Australia dismissed Santé Wines' application for permission to appeal to the Full Court, thereby bringing to an end the Victorian wholesaler's battle against a South Australian wine producer which it accused of breaching an exclusive distribution deal and failing to give a reasonable period of notice of termination.

Facts of the case

Santé had entered into an agreement in 2012 with Paxton to distribute its wine in Victoria. On 1 March 2016, Paxton

terminated its deal with Santé, effective 31 March that year.

Santé took Paxton to the Magistrates Court in Adelaide, contending that it required at least six months notice to terminate the contract, and that it would lose \$64,002.12 in sales commission if that notice was not given.

Lawyers for Paxton countered that all deals were off because Santé had consistently failed to pay its bills on time.

During the agency, Paxton had also sold \$153,000.00 of wine to Vinomofo, a direct-to-consumer, mail-order wine service which ships all around Australia out of Victoria. A total of 2000 cases of Paxton wines were sold to Vinomofo and delivered into Melbourne between June and August 2015.

Santé told the court that it was owed a \$10.00 commission on each case to make up for lost sales stemming from the exclusivity deal it said it had over Victoria.

Paxton admitted that Santé had a right of exclusivity, but that the scope of the deal did not cover online sales.

As you might have guessed by now, there was no finalised, signed, written distribution agreement. There was some correspondence and a draft unfinalised contract floating around.

Paxton began its own lawsuit for \$68,005 which it claimed was still owing to it for unpaid delivered wine, plus additional interest.

The findings

In April 2017, a magistrate found in favour of Paxton, finding that the exclusivity



The trite lesson from the case involving Santé and Paxton is to have a properly drafted, signed, distribution agreement in writing, dealing with all matters likely to arise during the commercial relationship.

deal was not contractually binding, and ordered Santé to pay \$73,755.

In July 2018, Santé appealed to a single judge of the Supreme Court.

Justice Greg Parker dismissed the appeal, saying that sales to Vinomofu were not restricted under the contract, which did not specifically outline online or internet sales. As stated, the Full Court refused leave to appeal, saying that there had been no errors in Justice Parker's decision.

The lessons

1. The trite lesson from the distributor and winemakers' point of view is to have a properly drafted, signed, agreement in writing, dealing with all matters likely to arise during the commercial relationship.
2. The parties must decide what degree of exclusivity the distributor is to have in the relevant market, and document it. Assuming that the exclusivity will include all licensed outlets operating within the relevant market, then the parties must decide whether it will also include the winery's mailing list

where purchasers are within the market; duty free sales and internet sales, where the internet wineseller operates within or sells into the market; direct sales to chains operating within the market, and direct marketers selling into the market, wherever based.

3. It may be that the financial arrangements for each market aspect might differ from a normal full commission down to some set management fee or commission per case, for example, on direct sales to chains.

Payout provisions on termination

The parties need to consider what will happen if the distribution arrangement continues over some years, resulting in a build-up of the principal's brand sales representing a material part of the distributor's business.

The distributor, which has built up the brand sales, will feel it has a stake in the increased brand equity. In addition, it will not necessarily be an easy thing for a distributor to quickly replace a worthwhile brand in its portfolio. One

would have thought that a period of three to six months might be reasonable for this purpose, accepting that there has to be an end point to which compensation provisions can apply. In the Santé Wines case, Santé sought lost commission equal to six months, but the court said, amongst other disorienting factors, that the brand did not represent a sufficiently large part of Santé's business to require substantial notice like that sought.

The right to terminate a fundamental breach for late payment

The court found that Santé consistently paid later than had been agreed, thereby entitling Paxton to terminate on the ground that Santé's non-performance of the strict payment terms amounted to an unlawful repudiation of the agreement. This was on the basis that payment on time is said to be a fundamental term of the agreement, the breach of which gives the other party the right of unilateral termination. An interesting aspect of the Santé claim was that, in reality, while Santé did not pay in accordance with the agreed terms of trade, it always paid "late" at or about the same time, being a length of time not catastrophically long.

This course of payment conduct had occurred virtually throughout the relationship, to the point where Santé said that it represented the regular and accepted pattern of payment over some years. The court did not accept Santé's estoppel-like argument that Paxton couldn't rely upon this as a breach, because it had become the accepted pattern of trading between the parties.

I think this suggests a need for careful consideration of the payment terms to ensure that they are workable, with some flexibility. This argues for the inclusion for provision, for example, that non-compliance with the payment terms within a certain parameter (say up to 90 days) will not represent a breach of a fundamental term. It's a bit sudden death otherwise.

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