

# Investment analysis

## Storage: when your case ends up in court

Having merchants store wine for you is handy, but if they run into financial difficulty, you might wish you'd dealt directly with the warehouse. Chaim Helfgott reports

STAPYLTON FLETCHER HAD been a wine merchant company for 200 years (under various names) when, in 1992, it was forced into liquidation. At the time, it had sold six cases of Château Haut-Bages Liberal 1989 (currently selling at about £350 per case) to John McArthur. The wine had been stored for McArthur in a bonded warehouse. The receiver appointed for Stapylton Fletcher claimed that the wines paid for by McArthur were still the property of the merchant and therefore subject to NatWest Bank's floating charge. According to Ian Benjamin, a partner at law firm Berwin Leighton Paisner, the court's decision regarding the ownership of the wine (explained later) was directly attributable to the wine-storage method.

Wine lovers often choose to store their wine in professionally managed wine warehouses. They may not have adequate storage facilities themselves or may be buying the wine as an investment, in which case storage in a bonded warehouse is normally a precondition to selling the wine, by having records of its provenance. The merchant can store the wines for customers under its umbrella agreement with the warehouse, or customers can open an account directly at the warehouse.

### Lack of control

Wine merchants commonly use one of three storage systems. Customers' wines may be stored together with wines of other customers and wines owned directly by the merchant. Alternatively, a separate area is designated for customers' wines. In both systems, the warehouse does not know who the particular customers are. In the third method, each case of wine is identified as having 'multiple owners' and marked with the names of both the merchant and the customer. In all instances, the customers' details are identified on the merchant's books. But crucially, in all three practices, the warehouse takes instructions only from the merchant and not from the customer who actually owns the wine.

In the first two practices, when a merchant has to fill an order quickly, it may 'use' customers' wines to fill the order and replace them with newly purchased wines of the same quality. Although this is done only after a source of the same wine has already been secured, the merchant may, under financial duress, be tempted to 'borrow' customers' wines without buying replacement wines (with the full intention of replacing them later). But what happens if conditions do not improve?



In Stapylton Fletcher's case, the judge inferred a customer's assent to the merchant appropriating cases of wine without prior consultation with the customer, because he claimed that 'one case of wine of a particular type and vintage is in practice to be regarded as identical with every other case of the same wine'.

Should a merchant go into liquidation, the liquidator will decide whether certain wines belong to customers. As only the merchant (and with its collapse, the liquidator) can give instructions to the warehouse, the customer will not be able to take any wine out of the warehouse or sell it, including cases of wine that were marked with the customer's name, until the liquidator has decided otherwise.

In McArthur's case, customers' wines were stored by a merchant in a warehouse, together with the merchant's own wine. As there was no indication of which wines belonged to which customers, he wound up as an unsecured creditor of the defunct merchant, and the wines were sold by the liquidator to satisfy the merchant's debt to the bank. As the court's decision was due to

**Above: before storing your wine via a merchant, ensure you check its financial stability, insurance policy and the storage system it uses – and visit the warehouse yourself if you can**



*'Should a merchant go into liquidation, you cannot take any wine out of the warehouse or sell it on, until the liquidator has decided whether the wine belongs to you or needs to be sold to pay creditors'*

English law regarding the liquidation of an English company, the residency or citizenship of the customer made no difference. This means that a US resident who stores his wines in the UK to avoid possible shipment damage could lose his investment if he chooses the wrong merchant through which to store his wine.

### Due diligence

So it seems that the advice that you should order your *en primeur* wine through a merchant who is reputable, financially stable and with a positive track record is also applicable to storing your duty-paid wine. It is also vital that you investigate the storage system used by a merchant and visit the warehouse in question. Being told that customers' wines are merely a few cases among a stack all marked with only the merchant's name is a different experience from seeing cases marked with the customer's name (as there are merchants that do so). It goes a long way towards driving home the risk associated with wine not being stored separately for the customers.

Why, then, would a customer take the risks associated with possible fraud and financial trouble just to store wine through merchants? Well, having the merchant store the wine is easy and ostensibly trouble-free. In addition, merchants pass on to their customers the better rates given to them by the warehouses, a saving of approximately £6 to £8 per case annually. Conversely, by having a direct relationship with a warehouse, the customer may contact the warehouse staff instead of having to go through the mediation of a merchant. They can then request services that normally would not be available through a merchant, such as having the contents of a case photographed, moving wine outside the warehouse, or delivering a single bottle from of a stored case.

It might be convenient to store wines via a merchant, but you must continually check the financial strength, insurance policy and storage system of that merchant, lest you find yourself an unsecured creditor instead of a wine owner. Alternatively, you can simply open an account directly with a warehouse and, in exchange for a higher rental payment, get the services directly. **D**

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