

BLACKS

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08 April 2016

BY EMAIL AND BY POST:
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PRE-ACTION PROTOCOL
LETTER OF CLAIM

Dear Sirs

Our Client: Mr Andrew ("Drew") Littler

We act for our above named client and have been instructed to write to you concerning your failure to deliver wine which he has purchased from you.

This letter is written pursuant to the Practice Direction contained within the Civil Procedure Rules 1998 entitled Pre-Action Protocol – "Pre-Action Behaviour in Other Cases". Accordingly we draw your attention to the Court's powers to impose sanctions for failure to comply with the Practice Direction.

On 4th August 2015 our client entered into an agreement with you ("**the First Purchase Contract**") for the purchase of 72 bottles of wine for the price of £7,650 which was paid by our client to you by Bank Transfer on 11th August 2015.

The First Purchase Contract comprised of the following wine:

24 bottles of Bodegas Noemia 2013
18 bottles of Bodegas Noemia DUE 2013
18 bottles of Ornellaia 2012
6 bottles of Verite Le Desir 2011
6 bottles Verite La Muse 2008

On 21st October 2015 our client entered into a further agreement with you ("**the Second Purchase Contract**") for the purchase of 564 bottles of wine for the price of £38,712. Prior to that our client had already paid you £30,000 for a previous purchase order on 13th October 2015 which was subsequently cancelled and therefore our client utilised that payment towards the Second Purchase Contract and paid the remaining balance due under the Second Purchase Contract of £8,712 to you on 22 October 2015.

The Second Purchase Contract comprised of the following wine:

192 bottles of Lipicaia Tuscany 2009
252 bottles of Lipicaia Tuscany 2010
120 bottles of Barolo Preve Reserva 2009

Of the wine purchased by our client only the 18 bottles of the Ornellaia 2012 have been delivered to date. Despite numerous requests and chase ups from our client for the delivery of the wine and promises by you of delivery, the wine has still not been delivered.

You have referred our client to your Terms and Conditions and have stated that you have a 90 day period within which to deliver the wine. Having considered those Terms and Conditions we do not believe that there is a 90 day delivery period. Clause 9 of your Terms and Conditions states that "*Title to the Products passes to the Collector as soon as the goods are ascertained and delivered to the Storage Facility*" and that "*...this may take up to 90 days...*". Accordingly, the 90 day period refers to the transfer of title of the wine and not the timescale for delivery.

Even if you are correct in your assertion regarding the timescale for delivery (which we do not believe you are) then the wine under the First Purchase Contract should have been delivered by no later than 2nd November 2015 and the wine in respect of the Second Purchase Contract should have been delivered by no later than 19th January 2016.

Our client wrote to Mr Tom White of your client company on 15 March 2016 (a further copy of that letter is attached) notifying you that if the wine from both the First Purchase Contract and the Second Purchase Contract were not delivered by 29th March 2016 then he would require a full refund of the monies that he has paid to you. Unfortunately, our client's letter contains a typographical error in that it refers to the purchase price as being £46,362 when in fact the purchase price should be £44,292.

By failing to deliver the wine to our client you have committed a repudiatory breach of contract and as a result of that breach our client is entitled to claim damages against you. Those damages are the monies that our client has paid to you for wine which you have failed to deliver. Our client therefore demands that you return to him the sum of **£44,292**.

Unless our client receives payment of the above sum within seven days from the date of this letter i.e. on or before **15th April 2016**, our client has instructed us to commence proceedings against you for the recovery of the said sum without any further notice or warning. Your payment should be made to this firm in order that we may receive the first notification of

payment therefore avoiding the unnecessary issue of legal proceedings. Should proceedings be necessary then in addition to his claim for damages our client will also be claiming statutory interest as well as the cost of those proceedings from you.

We trust that any further action will be unnecessary and that you will now take the steps required to avoid proceedings before the final deadline set above.

Yours faithfully

BLACKS SOLICITORS LLP