



No. S-230255
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**WAYGAR CAPITAL INC., as agent for
NINEPOINT CANADIAN SENIOR DEBT MASTER FUND L.P.**

PETITIONER

AND:

**THE VERY GOOD FOOD COMPANY INC., 1218158 B.C. LTD., 1218169 B.C. LTD.,
THE CULTURED NUT INC., THE VERY GOOD BUTCHERS INC., LLOYD-JAMES
MARKETING GROUP INC., and VGFC HOLDINGS LLC**

RESPONDENTS

NOTICE OF APPLICATION

Name(s) of applicant(s): CAFO INC.

To: The Service List

TAKE NOTICE that an application will be made by the applicant to the Honourable Justice Masuhara at the courthouse at 800 Smithe Street, Vancouver, B.C., on 23/JUNE/2025, at 10:00 a.m. for the orders set out in Part 1 below.

The applicant estimates that the application will take two (2) hours and thirty (30) minutes.

- This matter is within the jurisdiction of the associate judge.
 This matter is not within the jurisdiction of an associate judge.

PART 1: ORDERS SOUGHT

1. a declaration that CAFO Inc. (“CAFO”) has a first ranking priority interest in certain unearned and refunded premiums (the “**Trisura Premium Refund**”) arising from the

cancellation of a policy of insurance issued to The Very Good Food Company Inc. (“**VGFC**”) by Trisura Guarantee Insurance Company (“**Trisura**”);

2. an order compelling the Receiver to deliver up the Trisura Premium Refund to CAFO;
3. its costs of this application against any party who opposes the relief sought.

PART 2: FACTUAL BASIS

(i) GENERAL

1. CAFO is a finance company with offices in Toronto, Ontario. Its business is focussed solely on providing financing to its clients across Canada for the purchase of commercial policies of insurance;

2. CAFO provides financing pursuant to a standard form of contract called a Continuous Premium Instalment Contract (known more familiarly as a PIC). Pursuant to such agreements, CAFO provides financing to borrowers to pay the premiums due to insurers under a financed policy or policies of insurance. The borrower agrees to pay the loan back to CAFO in monthly instalments;

3. as security for the instalment payments, and pursuant to the terms of the PIC, the borrower explicitly (i) appoints CAFO as its Attorney-in-Fact with the right, upon a payment default by the borrower, to cancel the policies financed under the PIC; and (ii) assigns to CAFO the unearned premium arising from the early cancellation of the financed policies;

(ii) THE LOAN AGREEMENT

4. in 2022, VGFC purchased the following three policies of insurance with an aggregate premium owing in the amount of US\$1,100,000.00 from three separate insurers (the “**Insurers**”):

<u>Insurer</u>	<u>Type</u>	<u>Premium</u>
Lloyds Rising Edge Ltd.	DO	US\$500,000.00
Trisura Guarantee Insurance Company	XSDO	US\$300,000.00
Lloyds Syndicate 2786 Everest	XSDO	US\$300,000.00

5. each of the policies had a 12-month term commencing on October 13, 2022 and ending on October 13, 2023;

6. each of the Insurers required that the premiums of the policies be fully paid within a month or so of being bound;

7. after the binding of coverage, VGFC sought and obtained financing from CAFO to fund the premiums owing under the three policies;

8. pursuant to a Continuous Premium Instalment Contract dated October 17, 2022 (the “PIC”), VGFC borrowed US\$896,099.85 from CAFO to finance the premiums payable to the insurers in respect of the three policies (hereinafter, the “**Financed Policies**”);

9. the amount borrowed by VGFC pursuant to the PIC is particularized as follows:

Premiums (and Fees)	US\$1,105,000.00
Down Payment (by VGFC)	(US\$225,000.00)
Financing Charge	<u>US\$16,099.85</u>
Total Borrowed	US\$896,099.85

10. pursuant to the terms of the PIC, VGFC was obligated to repay the loan to CAFO in nine consecutive monthly instalments each of US\$99,566.65 on the 13th of each month commencing on November 13, 2022 and ending on July 13, 2023;

11. as indicated above, the Financed Policies are fully funded at the outset. As such, the premium held by the insurers is largely “unearned” at the outset and becomes “earned” with each passing day of the policy term. If a fully funded policy is cancelled before the end of its term,

the insurer is required to refund to the insured the unearned portion of the paid premium. The PIC absolutely and unconditionally assigned the unearned premiums under the Financed Policies to CAFO;

12. more specifically, pursuant to paragraph 3 of the PIC, VGFC:

- (1) irrevocably appointed CAFO as its attorney-in-fact with the full authority to cancel the Financed Policies in the event of a payment default by VGFC; and
- (2) assigned to CAFO, among other things, any and all unearned premiums which may become payable for any reason under the Financed Policies.

13. on October 28, 2022, and as required by the PIC, VGFC remitted a down payment of US\$225,000.00 to its broker (the “**Broker**”) as payment for a portion of the premiums due under the Financed Policies;

14. by separate **Notices of Financed Premium dated October 31, 2022**, CAFO provided written notice to each of the Insurers that VGFC had assigned to CAFO any and all unearned premiums which may become payable under the Financed Policies should they be cancelled before the end of their term. Each Notice of Unearned Premium provides as follows in that regard:

TO THE INSURER:

CAFO Inc. has agreed to advance the premium on the policy described above subject to the conditions herein. **The insured has assigned to CAFO Inc. any and all unearned premiums which may become payable under the policy** and given CAFO Inc. Power of Attorney to cancel the policy upon default of any payment. [Emphasis added]

15. on November 14, 2022, CAFO advanced the balance of the premium owing under the Financed Policies on VGFC’s behalf by remitting US\$880,000.00 to the Broker. The Financed Policies were thus fully funded by that date;

(iii) VGFC'S PAYMENT DEFAULT

16. VGFC's first monthly instalment required by the PIC - US\$99,566.65 - was due on November 13, 2022. VGFC remitted that instalment to CAFO on November 23, 2022;

17. VGFC's second monthly instalment required by the PIC – US\$99,566.65 - was due on December 13, 2022. VGFC failed to remit that second monthly instalment when due (or at all). VGFC has therefore been in default of its payment obligation under the PIC since December 13, 2022;

18. by **Notice of Intent to Cancel** dated January 3, 2023, CAFO advised VGFC that its instalment due on December 13, 2022 had not been made and that as a result the Financed Policies would be cancelled unless the payment default was cured by January 13, 2023;

19. VGFC did not cure its payment default by January 13, 2023 or at all. Moreover, it has failed to make any subsequent monthly instalments payable under the PIC;

(iv) THE RECEIVERSHIP.

20. by order of the Honourable Mr. Justice Walker of the Supreme Court of British Columbia dated January 16, 2023 (the "**Receivership Order**"); on petition by Waygar Capital Inc. ("**Waygar**"), BDO Canada Limited (the "**Receiver**") was appointed as receiver and manager of all of the assets, undertakings and properties of VGFC (and related companies). Paragraphs 10 and 11 of the Receivership Order imposed a stay of proceedings against VGFC and its property;

21. CAFO was not served with the application materials or the Receivership Order at that time and so it was initially unaware of either the receivership proceedings or of the Receivership Order;

(v) THE CANCELLATION OF THE FINANCED POLICIES

22. on January 19, 2023, (being unaware of the Receivership Order or proceedings at that time) CAFO exercised its right as Power of Attorney for VGFC to cancel the Financed Policies by sending separate **Notices of Cancellation** to the insurers on that date (including Trisura);

(vi) COMMUNICATIONS WITH THE RECEIVER

23. on January 24, 2023, CAFO became aware from public news sources that VGFC was subject to the within proceedings and that the Receiver had been appointed. Through its legal counsel, CAFO requested a copy of the Receivership Order from the Receiver on that date;

24. CAFO then sought the Receiver's consent to cancel the Financed Policies and to have the refunded premiums returned to it;

25. on January 30, 2023, the Receiver confirmed to CAFO that it consented to the cancellation of the Financed Policies after which CAFO took steps to have all three cancelled effective January 19, 2023;

(vii) CANCELLATIONS AND REFUNDED PREMIUMS

26. each of the Insurers (including Trisura) cancelled the Financed Policies effective January 19, 2023 (the cancellation date in each of CAFO's Notices of Cancellation);

27. while CAFO received the premium refunds from the cancellation of two of the Financed Policies (the two Lloyds policies), the Receiver has resisted CAFO's claim to the premium refund arising from the cancellation of the Trisura Policy (i.e. the Trisura Premium Refund). The Receiver has taken the position that Waygar has a first ranking priority interest in the unearned premiums;¹

28. given the dispute, CAFO and the Receiver have agreed that the Trisura Premium Refund (which amounts to US\$180,000.00) would be held by the Receiver pending the outcome of this application;

¹ The Receiver is making a cross-application to be heard with CAFO's application for an order compelling CAFO to deliver up to the Receiver the Premium Refunds in relation to the other two policies.

29. as of the date of this application, CAFO is owed the principal sum of US\$220,094.85 under its PIC. If successful on this application, the Trisura Premium Refund will be applied to VGFC's outstanding balance leaving a shortfall of US\$40,094.85;

30. CAFO is seeking costs of this application against the Receiver and any party that opposes the within application.

PART 3: LEGAL BASIS

1. The issues raised by this application touch on two statutes:

- (1) the *Personal Property Security Act*, R.S.B.C. 1996, c.359 (the "**PPSA**"); and
- (2) the *Insurance Act*, R.S.B.C. 2012, c.1 (the "**Insurance Act**")

The PPSA

2. the PPSA specifically exempts from its application, the creation of an interest or claim in or under a policy of insurance (which includes an interest in unearned premiums);

3. specifically, pursuant to section 4(c) of the PPSA (the "**PPSA Exclusion Provision**"), the assignment by an insured to the refund of premium is explicitly excluded from the scope of the PPSA;

4. the PPSA Exclusion Provision provides as follows:

Exclusions from scope of Act

4. *Except as otherwise provided in this Act, this Act does not apply to the following:*

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- (c) *the creation or transfer of an interest or claim in or under a policy of insurance except the transfer of a right of money or other value payable under a policy of insurance as indemnity or compensation for loss of or damage to collateral;*

5. a 2006 decision of the Court of Appeal for Ontario in *Re Stelco* – which considered the similarly worded PPSA Exclusion Provision contained in the Ontario PPSA – held that the PPSA Exclusion Provision in the Ontario PPSA exempts a security interest in an unearned premium from application under that Act. The substance of the PPSA Exclusion Provision in the Ontario PPSA is the same as the PPSA Exclusion Provision in the BC PPSA relevant to the matter before the court;

6. given the above, CAFO has not registered its interest in the unearned premiums in the PPSA registry and instead relies upon the provisions of the *Insurance Act* (set out below) as the basis for its first ranking interest in the unearned premiums;

7. moreover, given the PPSA Exclusion Provision, Waygar’s PPSA registration of its security interest does not perfect Waygar’s interest in the unearned premiums. Unlike CAFO, Waygar did not comply with the provisions of the *Insurance Act* to obtain an interest in the unearned premiums;

The Insurance Act

8. to obtain an interest in unearned insurance premiums is governed by section 19 of the *Insurance Act*;

9. section 19 of the *Insurance Act* provides as follows:

Payment of refund to assignee

19(1) ***If an insured assigns the right to refund of premium that may accrue by reason of the cancellation or termination of a contract of insurance under the terms of its and notice of the assignment is given by the assignee to the insurer, the insurer must pay any refund to the assignee, despite any condition in the contract, whether prescribed under this Act or not, requiring the refund to be paid to the insured or to accompany any notice of cancellation or termination to the insured. [Emphasis added]***

10. therefore, to acquire an interest in the unearned premium, it would be necessary for (i) the debtor to have assigned to the creditor the right to a refund of premium; and (ii) for the creditor to have provided notice of the said assignment to the insurer. CAFO has satisfied both conditions;

11. Waygar has satisfied neither condition;

12. more specifically, Waygar (i) has not obtained an assignment from VGFC of the unearned premiums; and (ii) accordingly, it has not provided notice to the Insurers (including Trisura) that it had received an assignment from VGFC of the right to the refund of premium under the Financed Policies;

13. therefore, between CAFO's perfected interest in the unearned premiums and Waygar's unperfected interest in same, the former has a priority claim;

14. in the alternative, if Waygar's security interest in the unearned premiums is perfected (which is specifically denied), the common law would dictate that CAFO has a first ranking priority claim in the unearned premiums;

15. CAFO relies on Rule 8-1 of the *Supreme Court Civil Rules*; and

such further and other legal basis that counsel may advise and that to this Honourable Court may appear just.


Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 Jayson R. Thompson, made June 11, 2025.
2. Agreed Statement of Facts between the Receiver and CAFO.
3. Such further and other materials that counsel may request that this Honourable Court may admit.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to the application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under 9-7(9).

Date: 10/JUNE/2025



Signature of counsel for applicant
for Gustavo F. Camelino

To be completed by the court only:

Order made

- in the terms requested in paragraphs _____ of Part 1 of this notice of application
- with the following variations and additional terms:

Dated: _____

Signature of

- Judge
- Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above