

IN THE CIRCUIT COURT OF THE  
17<sup>TH</sup> JUDICIAL CIRCUIT IN AND  
FOR BROWARD COUNTY, FLORIDA

CASE NO.: 08-19110 (25)

DOLORES MILLETTE, individually  
and derivatively on behalf of BRT  
HOLDINGS, INC., a Delaware  
corporation, BRT SERVICES, INC.,  
a Delaware corporation, f/k/a RILEY  
HARPER & SONS, LTD., on its behalf  
and derivatively on behalf BRT HOLDINGS,  
INC., a Delaware corporation,

Plaintiffs,

vs.

BRT HOLDINGS, INC., a Delaware  
corporation, and STEVEN M. REPETTI,  
Individually,

Defendants.

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**ORDER ON PLAINTIFF'S AMENDED EXPEDITED VERIFIED MOTION  
TO APPOINT RECEIVER CUSTODIAN OR PROVISIONAL DIRECTOR  
AND PLAINTIFFS' VERIFIED EMERGENCY MOTION FOR  
TEMPORARY INJUNCTIVE RELIEF**

THIS CAUSE having come before the court on July 11, 2008, September 5, 2008, and October 1, 2008, upon the Plaintiff's Amended Expedited Verified Motion to Appoint Receiver, Custodian, or Provisional Director and Plaintiff's Verified Emergency Motion for Temporary Injunctive Relief, and the Court having considered the evidence and arguments presented by the parties, finding sufficient grounds for the entry of the order and otherwise being duly advised in the premises, it is hereby Ordered and Adjudged:

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GABRIEL B. MACALUSO, P.A.

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### Findings of Fact

1. This Court has jurisdiction over the corporation BRT Holdings, Inc. a Delaware corporation, and may exercise judicial authority over its affairs and assets given its qualification as a foreign corporation doing business in the State and that its corporate offices and assets are maintained within this jurisdiction.
2. Plaintiffs bring their Verified Motion to Appoint Receiver, Custodian or Provisional Director seeking appointment of a custodian pendent lite pursuant to Florida Statutes § 607.1430 & 607.1434(a). These provisions allow for the judicial appointment of a custodian where a shareholder or group of shareholders in a corporate of 35 or fewer shareholders show that the corporate assets are being misapplied or wasted, and have caused material injury to the corporation, or where the directors or those controlling the corporation have acted, are acting, or are reasonably expected to act in a manner that is illegal or fraudulent. Florida Statute § 607.1430. A custodian pendent lite "may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors." Fla. State§607.1432(3)(b) Plaintiffs also bring their Verified Motion for Temporary Injunctive Relief seeking to enjoin Defendant Steven Repetti from undertaking any corporate acts on behalf of the Defendant BRT Holdings, Inc., including the sale or transfer of funds or assets, the sale or issuance or creation of shares, the taking of any new loans, undertaking of corporate acts or decisions by written consent, or ratification of prior corporate acts or decisions by written consent.
3. The Court having carefully weighed and considered all the testimony, including deposition testimony, and exhibits in evidence, finds that the Plaintiffs are entitled to relief under Florida Statutes § 607.1430 and have made the requisite showing that under the direction and control of Defendant Steven Repetti, the assets of Defendant BRT Holdings Inc. are being misapplied or wasted, and finds as follows:
  - a. Under Mr. Repetti's exclusive control, Mr. Repetti transferred substantial assets of the corporation to a corporation that he formed, Fifth Generation Systems, altering the corporate purpose of BRT Holdings Inc., from an insurance administrative services and insurance software development company to a holding company with no accounts or income, and that Mr. Repetti did not provide notice to any of BRT Holdings Inc's shareholders other than Edwin Milette, Jr.

- b. Mr. Repetti disregarded numerous corporate formalities and the rights of the shareholders and denied their shareholder status or their right to notice of corporate actions.
- c. Mr. Repetti acknowledged the difficulty in determining the equity interests of all the shareholders after many years of failing to adequately document their interest.
- d. From 2002 until 2007, Mr. Repetti continued the practice of not paying employee payroll taxes resulting in a \$1.7 million corporate liability for taxes and penalties.
- e. From 2002 until may 31, 2008, Mr. Repetti withdrew more than \$500,000.00 in funds from the corporate accounts for personal use without seeking shareholder approval.
- f. Mr. Repetti has soled substantial assets of BRT Holdings Inc., its stock in fifth Generation Systems, without notice to shareholders or shareholder approval other than Edwin Millette Jr. In 2007, when BRT Holdings Inc. had no income, except from the sale of these assets, Mr. Repetti borrowed more than \$120,000.00 in unpaid sums from the corporate account without seeking shareholder approval. Mr. Repetti claimed in his testimony that he was the majority shareholder and was authorized to take such actions.
- g. Without seeking share holder approval in related litigation, Mr. Repetti rejected a pre-trial offer by Affirmative Holdings to "walk away" from the trial and not to pursue a claim for monetary sanctions against BRT Holdings Inc. approved by this Court for Mr. Repetti's discovery misconduct in that litigation. Without seeking shareholder approval, Mr. Repetti pledged the remaining assets of BRT Holdings Inc., its stock in Fifth Generation Systems, to his counsel to cover the attorney's fees in the Affirmative trial. Mr. Repetti's corporate authority to transfer or encumber these assets was the very subject of the Plaintiff's pending motion for injunctive relief.
- h. Mr. Repetti instructed the corporate accountant to without general ledges when BRT produced tax returns and financial statements to Plaintiffs under Florida law.

Conclusions of Law

4. The Court hereby removes Steven M. Repetti as an officer and director of the corporation until such time as this Order is amended, modified, or vacated. To the extent that Steven M. Repetti currently serves as BRT

Holdings Inc.'s representative before any other corporation, including but not limited to, Fifth Generation Systems Inc.'s Mr. Repetti shall resign that position and shall not hold himself out as a representative of BRT Holdings to third parties pending the outcome of this litigation and the report and recommendation of the custodian as outlined below.

5. The Court hereby appoints Dolores Millette, Edwin Millette (also known as Edwin Millette Sr., Daryl Polenz, and an independent custodian, *Edward Rizzuoli* as the Custodians and provisional directors pursuant to Florida Statutes § § 607.1432 and 607.1435, respectively.  
*954-525-7500*

6. The custodians are empowered to exercise all of the powers of the corporation through or in place of its Board of Directors or officers to the extent necessary to manage the affairs of the corporation in the best interest of the shareholders and creditors.

7. Mr. Repetti shall turn over all corporate records in his possession, custody, or control wherever located including any and all documents relating to corporate governance and shareholder interests and all documents pertaining to the assets, accounts liabilities, promises, or obligations of BRT Holdings Inc., to the custodian within five (5) days.

8. The Court hereby specifically empowers the Custodians to take the following acts, but without limiting other acts:

- a. Assess and make recommendations regarding the proper allocation of shares of stock over the course of the life of the corporation to date;
- b. Identify and locate all corporate assets and liabilities, and if possible, appraise or assess as may be reasonably determined;
- c. Review of all internal accounting records of the corporation wherever located and to make a determination of the current fiscal status of BRT. The Custodians are further empowered to recommend to the Court and BRT Holdings Inc.'s shareholders to take all action necessary to recover those funds or assets. Any action, compromise, settlement, or release must be properly noticed and approved by both the corporation and this Court;
- d. Review and assess the corporation's relationship with Fifth Generation Systems Inc., including a review of all of the corporation's rights under the assignment and assumption agreements and related agreements, to assess the corporation's standing under the agreement and the software license to BRT

Holdings thereunder and to demand performance of any aspect of the agreements;

- e. To determine extent of the ownership interest of the corporation in Fifth Generation Systems Inc.,
  - f. The Custodians empowered to evaluate and assess what rights BRT Holdings Inc. has, if any, in regards to placing a representative on the Board of Directors of Fifth Generation Systems Inc.
  - g. In furtherance of the custodian's duties and powers set forth herein, the custodians shall represent the corporation in its dealings with third-parties including but not limited to legal and accounting professionals, creditors, and the officers and directors of Fifth Generations Systems Inc.
9. The Custodians shall report to the shareholders and this Court its findings and recommendations as to the aforementioned matters within sixty (60) days.
10. The Custodians shall serve without bond. The independent Custodian shall be compensated for his/her time on a monthly basis upon approval of the Court as to the reasonable of the expenses. Until such time as corporate assets are located that can be applied towards compensation of the custodian, Plaintiffs shall be solely responsible for the expenses of the custodian as approved by this Court.
11. The Court reserves jurisdiction to modify or vacate this Order.

**DONE and ORDERED** in Chambers, in Fort Lauderdale, Broward County, Florida, this \_\_\_\_ day of October, 2008.

CAROL-LISA PHILLIPS

OCT 28 2008

JUDGE CAROL-LISA PHILLIPS A TRUE COPY

**Copies furnished to**

Keith T. Grumer, Esq. (Keith T. Grumer shall distribute a copy of this Order to all Defendant Shareholders of BRT Holdings Inc.)  
James Sparkman, Esq.