

Court File No. N/M/17/10

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
IN BANKRUPTCY AND INSOLVENCY
JUDICIAL DISTRICT OF MIRAMICHI



IN THE MATTER OF THE RECEIVERSHIP OF:

ATCON GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS INC., ATCON LOGISTICS INC., ATCON CONSTRUCTION INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., DYCON CONSTRUCTION LTD., ATCON STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC.

PURSUANT TO Section 33 of The *Judicature Act*, R.S.N.B. 1973, Ch. J-2, Rule 41, Rules of Court, New Brunswick and Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3

BETWEEN:

chartered bank
Province of

THE BANK OF NOVA SCOTIA, a Canadian
with a registered office in the City of Saint John,
New Brunswick

APPLICANT

- and -

ATCON GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS INC., ATCON LOGISTICS INC., ATCON CONSTRUCTION INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., DYCON CONSTRUCTION LTD., ATCON STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC., all of which are carrying on business in the Province of New Brunswick

RESPONDENTS

Jeff
30 June 2010

ORDER

THIS MOTION, made by Ernst & Young Inc. in its capacity as Court-appointed receiver and receiver manager of the property, assets and undertakings of the Respondents (the "**Receiver**") for an order, *inter alia*, approving the settlement agreement dated May 27, 2010 between the Receiver, Pennecon Atcon JV General Partner Inc. and Penney Construction Ltd. (the "**Pennecon Settlement Agreement**") appended to the Fourth Report of the Receiver dated June 25, 2010 (the "**Fourth Report**"), and authorizing and directing the Receiver to take certain steps with respect to the Pennecon Amount (as defined herein), was heard this day at 673 King George Highway, Miramichi, New Brunswick.

ON READING the Fourth Report and all the appendices attached thereto, including the Pennecon Settlement Agreement and the Requirement to Pay dated February 26, 2010 issued by Canada Revenue Agency ("**CRA**") to Pennecon Heavy Civil Ltd. pursuant to the section 317(3) of the *Excise Tax Act* (Canada) in the amount of \$268,223.77 in connection with Atcon Construction Inc. (the "**HST Requirement to Pay**"), and on hearing the submissions of counsel for the Receiver and such other counsel in attendance,

1. **THIS COURT ORDERS** that the time for service of the Receiver's Notice of Motion, the Fourth Report and the Record on Motion shall be and is hereby abridged and validated so that the motion is properly returnable today, and that any further service thereof is hereby dispensed with.

2. **THIS COURT ORDERS AND DECLARES** that the Pennecon Settlement Agreement is hereby approved, and the execution of the Pennecon Settlement Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the terms of the settlement contained in the Pennecon Settlement Agreement.

jud
30 Jan 2010

3. **THIS COURT ORDERS** that, with respect to the amount of \$3,222,385 to be paid to the Receiver pursuant to the terms of the Pennecon Settlement Agreement (the "**Pennecon Amount**"), the Receiver is authorized and directed, upon receipt of the Pennecon Amount, to:

- (a) pay a portion of the Pennecon Amount, in the amount of \$268,223.77, to CRA in connection with the HST Requirement to Pay;
- (b) hold a portion of the Pennecon Amount, in the amount of \$929,786, in a separate interest bearing trust account pending further Order of this Court (the "**Holdback Amount**"); and
- (c) utilize the balance of the Pennecon Amount, in the amount of \$2,024,375.23, for the purpose of making payments (including interim payments) required or permitted by the Receivership Order dated March 2, 2010 granted in these proceedings as amended by the Order dated March 30, 2010 granted in these proceedings.

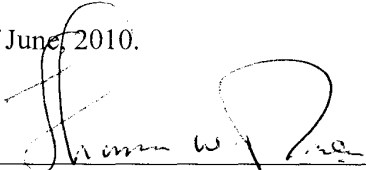
4. **THIS COURT ORDERS** that, with the exception of paragraph 3 of this Order, this Order and any person's consent or non-opposition thereto is without prejudice to all arguments, rights and claims or encumbrances of any nature or kind whatsoever (collectively, "**Claims**"), including without limitation:

- (a) any Claims or rights of any kind related to the Holdback Amount, including the existence of any mechanic's lien rights under the *Mechanic's Lien Act* (Newfoundland & Labrador);
- (b) the right to argue that any Claim or mechanic's lien under the *Mechanic's Lien Act* (Newfoundland & Labrador) is invalid or does not charge the Holdback Amount, or any part thereof; and
- (c) any argument relating to quantum of and priority of any Claim to the Holdback Amount, or any part thereof.

June
30 June 2010

For greater certainty, nothing in this Order shall be deemed to have determined (i) the validity, quantum or priority of any Claim or the right of any party to the Holdback Amount or any part thereof, (ii) that the Holdback Amount stands in the place and stead of any real property, and (iii) that any claim for lien filed by any person under the *Mechanic's Lien Act* (Newfoundland & Labrador) applies to, attaches to or charges the Holdback Amount or any part thereof.

Dated at Miramichi, New Brunswick, this 30th day of June, 2010.



Thomas W. Riordon
Judge of the Court of Queen's Bench
of New Brunswick