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:

THE BANK OF NOVA SCOTIA, a Canadian chartered bank with a registered office in the City of Saint John, Province of 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

SEVENTH REPORT OF THE RECEIVER

September 24, 2010

INTRODUCTION AND PURPOSE

1. In connection with the applications of The Bank of Nova Scotia (the "**Bank**") pursuant to section 33 of the *Judicature Act* (New Brunswick), Rule 41 of the Rules of Court of New Brunswick, and section 243 of the *Bankruptcy and Insolvency Act* (Canada) that were heard by The Honourable Mr. Justice Riordon of the Court of Queen's Bench of New Brunswick on March 1, 2010 and March 30, 2010, Ernst & Young Inc. was respectively appointed as receiver and receiver manager (the "**Receiver**") of the property, assets and undertakings (collectively, the "**Property**") of:

   (a) Atcon Group Inc., Atcon Holdings Inc., Atcon Property Holdings Inc., Atcon Veneer Products Inc. and Atcon Logistics Inc. pursuant to the Receivership Order dated March 2, 2010 (the "**March 2 Order**"); and

   (b) Atcon Management Services Inc., Atcon Civil Ltd., Dycon Construction Ltd., Atcon Structures Inc., Atcon Construction Inc. and Envirem Technologies Inc. pursuant to an Order dated March 30, 2010 (the "**March 30 Order**", and together with the March 2 Order, the "**Receivership Order**").

2. The Receivership Order, among other things, authorizes and empowers the Receiver to:

   (a) take possession and control of the Property;

   (b) receive, preserve and protect the Property, or any parts thereof;

   (c) market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

   (d) sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, with requirements that the approval of this Court in respect of any transaction in which the purchase price exceeds $100,000 or the aggregate purchase price for all such transactions exceeds $1,000,000;

   (e) apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property; and

(f) take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

3. The purpose of this Seventh Report is to report to this Honourable Court on the results of the Tender Process (as defined below) conducted by the Receiver with respect to the Atcon Eastern Assets (as defined below) and request that this Honourable Court grant an Order authorizing and empowering the Receiver to sell certain assets to the parties that submitted tenders in the Tender Process that were accepted by the Receiver and to enter into an auction agreement with Asset Sales (as defined below), being the auctioneer that submitted a bid in the Tender Process that has been accepted by the Receiver.

TERMS OF REFERENCE

4. In preparing this Seventh Report, the Receiver has been provided with, and has relied upon unaudited historical financial statements, other unaudited financial information and projections prepared by the Respondents, the books and records of the Respondents, discussions with certain management and employees of the Respondents, and other information from various sources. The Receiver has assumed that the information it has been provided is accurate and complete. The Receiver did not audit, review or otherwise attempt to verify the accuracy or completeness of the information. Accordingly, the Receiver expresses no opinion or other form of assurance with respect to the information presented in this Seventh Report or relied upon by the Receiver in preparing this Seventh Report. Further, the nature of the Receiver's work completed in these proceedings will not necessarily disclose errors, misstatements, irregularities or illegal acts, if such exist, on the part of the Respondents, or its officers or employees or in the information.

5. All references to monetary amounts in this Seventh Report are in Canadian dollars unless otherwise noted.

6. Capitalized terms not defined in this Seventh Report are as defined in the Receivership Order.

7. Copies of Court materials in these proceedings may be obtained from the Receiver's website established in connection with the Respondents (www.ey.com/ca/atcon) (the "**Website**").

TENDER PROCESS

Approval of Tender Process

8. As is set out in greater detail in the Receiver's Fifth Report to the Court dated July 23, 2010 (the "**Fifth Report**"), the Receiver brought a motion returnable July 28, 2010 seeking, among other things, the approval of this Honourable Court to conduct a tender process with respect to the Property of the Respondents located in the Province of New Brunswick (the "**Tender Process**"). Attached hereto as **Appendix "A"** is a copy of the Fifth Report (without appendices). The Property subject to the Tender Process (the "**Atcon Eastern Assets**") and the Tender Process to be conducted by the Receiver are respectively described in paragraphs 13-14 and 16-21 of the Fifth Report.

9. Pursuant to the Order of Justice Riordon of the Court of Queen's Bench of New Brunswick dated July 28, 2010 (the "**July 28 Order**"), this Honourable Court approved the Tender Process and the Tender Information Package (as defined in the July 28 Order) and authorized and empowered the Receiver to carry out and conduct the Tender Process in accordance with the terms and conditions outlined in the Tender Information Package and the Tender Process (as described in the Fifth Report). Attached hereto as **Appendix "B"** is a copy of the July 28 Order.

Marketing of Tender Process/Site Viewings

10. In accordance with the Tender Process approved by this Honourable Court in the July 28 Order, the Receiver took the following steps to market the Atcon Eastern Assets:

    (a) Regional Advertising: an advertisement was published in the following regional newspapers on July 31, 2010 and August 7, 14, and 21, 2010:

        (i) Telegraph Journal (Saint John);

        (ii) Times & Transcript (Moncton);

(iii) Fredericton Gleaner (Fredericton); and

(iv) L'Acadie Nouvelle (NB Francophone);

(b) National Advertising: an advertisement was published in the Globe & Mail (National Edition) on August 4, 11, 18, and 25, 2010;

(c) Direct E-mail/Fax Advertising:

(i) the Receiver engaged CNW Group (Canada Newswire) to fax the tender advertisement to approximately 820 construction and construction related companies throughout Canada and the North-eastern region of the United States of America;

(ii) the Receiver sent the tender advertisement, along with instructions on how to access the Tender Information Package on the Website by e-mail to approximately 720 construction and construction related companies, which is comprised of companies operating in the Atlantic Canada region, prospective buyers outside Atlantic Canada who had previously contacted the Receiver to indicate their interest in the Atcon Eastern Assets, and other industry participants known to the Receiver;

(d) Construction & Road Building Associations: the Receiver requested, and was granted permission, to post a link to the Tender Information Package on the Website on the websites of the construction and road building associations listed below. Additionally, each of the associations issued an e-mail notification to its members advising them of the tender opportunity and the link on their respective websites:

(i) Nova Scotia Road Builders Association;

(ii) New Brunswick Road Builders Association; and

(iii) Newfoundland Construction Association.

11. During the period commencing on July 30, 2010 and ending on the tender closing date of August 31, 2010:

(a) interested parties were able to review the Tender Information Package on the Website and/or download a copy of the Tender Information Package. The

Receiver is unable to confirm the number of interested parties having viewed or downloaded the Tender Information Package during this time frame;

(b) 95 companies contacted the Receiver directly requesting additional information on the Tender Information Package and the Atcon Eastern Assets available for tender; and

(c) 26 companies contacted the Receiver and scheduled and completed a site visit / tour to view and inspect the Atcon Eastern Assets available for tender.

Submissions of Tenders

12. As set out in the Tender Information Package and the Fifth Report, sealed tenders were to be received by the Receiver on or before August 31, 2010 for the purchase, on an "as is, where is" basis, of all or part of the Atcon Eastern Assets, subject to terms and conditions of sale commonly used in receivership asset sales, including the provision of a 15% deposit. The Tender Information Package separated the Atcon Eastern Assets into 5 parcels. Attached hereto as **Appendix "C"** is a copy of the Detailed Parcel Listing as of July 2010 that was attached as Appendix "A" to the Tender Information Package.

13. As of August 31, 2010, the Receiver received 52 tender packages with respect to the Atcon Eastern Assets, including 7 tenders from auctioneer firms offering minimum guaranteed bids for differing assets. In addition, the Receiver received 4 tender packages following the August 31, 2010 deadline on September 1, 2010.

Approval Process re Tenders

14. As set out in the Tender Information Package and the Fifth Report, the Receiver was required to communicate the acceptance of tenders on or before September 10, 2010, subject to, where applicable, the Receiver obtaining Court approval.

15. Following receipt of tenders on August 31, 2010, the Receiver reviewed each of the tenders that were submitted for portions of the Atcon Eastern Assets.

16. The details with regard to the tenders submitted to the Receiver for the Atcon Eastern Assets in the Tender Process and the Accepted Tenders (as defined below) will be set out

in a Supplement to the Seventh Report dated September 24, 2010 (the "**Supplemental Report**"), which will be made available to this Honourable Court prior to the hearing of the motion in respect of this Seventh Report.

17. The Receiver will be seeking a sealing order from this Honourable Court with respect to the Supplemental Report, on the basis that the Supplemental Report contains sensitive commercial information, the dissemination of which could be prejudicial to the best interests of the Respondents' stakeholders and to the successful completion of any future sales transactions in the event that any of the Accepted Tenders do not close.

18. The Receiver identified the combination of tenders that maximized the net recovery from the Atcon Eastern Assets for the receivership estates of the Respondents.

<u>Individual Tenders</u>

19. Based on its review of the tenders, the Receiver determined that it had achieved acceptable individual tenders for the majority of the Parcel 1 assets (the Quarry Assets), the majority of the Parcel 5 assets (the Real Estate Assets) and sub parcel 2.1B (the Kobelco Crane). The tenders of the parties listed below (the "**Individual Tenderers**") have been accepted by the Receiver (the "**Accepted Individual Tenders**"), subject to obtaining the approval of this Honourable Court:

TENDER PARTY	PARCEL	ASSETS
Atlantic Minerals Limited	1.1A	Nine conveyors
C.M. Dickison & Sons Ltd.	5.1A	Building and land at 626 Newcastle Blvd (PID 40489437)
	5.1B	Office furnishings located at 626 Newcastle Blvd
	5.8	Land located on 626 Newcastle Blvd (PID's 40127862, 40177131, 40277873, 40175622, 40277881)
Caldwell & Ross Limited	2.1B	1996 Kobelco BM700 75-ton crawler crane and sleeve
	5.18	Land and chattels located on Cross Roads (PID 40276263)
Concreate USL Ltd.	5.4	Building, contents and land located at 3 Chapel Road (PID's 40204778, 40304487 and 40304529)
Falls Construction Ltd.	1.1D	Crushed rock inventory

	1.1 E	Quarry leases, licenses, permits
Five Islands Forest Development Ltd.	5.21 A, B and C	Land located at Island View Drive (PID 40473068), land located at Donaldy Road (PID 40473076), and land located at Route 126 (PID 40095887)
Gary Leroux	5.17	Hubbard Street, Miramichi, New Brunswick (PID 40219933)
	5.19	Exmoor, Miramichi, New Brunswick (PID 40335184)
	5.20	Raiche Street, Miramichi, New Brunswick (PID40374266)
	5.23	Nelson Street, Miramichi, New Brunswick (PID 40221459)
Goodfellows Trucking Ltd.	5.70	Crosby Road, Newcastle Bvld, Miramichi, New Brunswick (PIDs 40052912, 40052995, 40328734, 40328742)
	5.90	Napan Road, Centre Napan, New Brunswick (PID 40053001)
	5.12	King George Highway, Miramichi, New Brunswick (PID 40165656)
HBH Paving Ltd.	1.3A	Quarry leases – Wayerton
Northern Construction & Supplies Ltd	1.2A	Luff Conveyor
	1.2C	Ricc & Lake Scale
	1.2D	Tank & Diesel Fuel
	1.2E	Crushed Rock Inventory
	1.2F	Quarry Land PID 10208858
	1.2G	Quarry leases, licenses, permits
Terrance Kelly	5.60	Nelson Street, Miramichi, New Brunswick (PIDs 40221426, 40219941, 4021434)
	5. 14	149 St. Patrick's Drive, Miramichi, New Brunswick (PID 40217994)
	5.15	St. Patrick's Drive, Miramichi, New Brunswick (PID 40466039)
	5.22	Nelson Street, Miramichi, New Brunswick (PID 40286668)

20. Attached hereto as **Appendix "D"** are redacted copies of the Accepted Individual Tenders that have been accepted by the Receiver, subject to approval of this Honourable Court. Unredacted copies of the Accepted Individual Tenders will be attached as an appendix to the Supplemental Report.

Auctioneer Tenders

21. Based on its review of the tenders, the Receiver concluded that the net minimum guaranteed bids offered by the auctioneer firms would likely exceed the cumulative highest individual tenders submitted for the Parcel 2, 3 and 4 assets (excluding sub parcel 2.1B). However, the auctioneer tenders in their original submission format could not be directly compared, as they were based upon differing asset combinations.

22. As a result, on September 3, 2010, the Receiver wrote to each of the 7 auctioneer firms who submitted tenders and asked that they submit an amended tender proposal to the Receiver by no later than 5:00 pm AST on Wednesday September 8, 2010 to conduct an auction for the following assets:

    (a) Parcel 2 (all assets except sub-parcel 2.1B – 1996 Kobelco Crane);

    (b) Parcel 3 (all assets);

    (c) Parcel 4 (all assets);

    (d) Nordberg 7' x 20' screener with triple deck (VIN TRAC 13113-10-04-03); and

    (e) 2000 Midland Tandem Quarter Frame - Dump trailer (VIN 2MFB2R6C5YR000676).

23. The latter two items listed above were not included in the Tender Information Package, as the Receiver had not confirmed their existence prior to the Tender Information Package being finalized and approved by this Honourable Court pursuant to the July 28 Order.

24. Each of the 7 auctioneer firms did provide the Receiver with a new tender prior to the September 8, 2010 deadline. The Receiver was then able to determine that the amended auction tender submitted by Asset Sales (Canada) Inc. ("**Asset Sales**") offered the highest guaranteed net minimum return for the Respondents' receivership estates compared to the

other auctioneer tenders and exceeded the cumulative highest individual tenders received from all other tenders for the purchase of these specific assets. Attached hereto as **Appendix "E"** is a copy of the redacted Asset Sales tender (the "**Accepted Auction Tender**"). An unredacted copy of the Accepted Auction tender will be attached as an appendix to the Supplemental Report.

25. As discussed further below, the Receiver sent a letter to Asset Sales on September 10, 2010 confirming that the Receiver was conditionally accepting its Accepted Auction Tender. On September 21, 2010, the Receiver was contacted by Asset Sales following Asset Sales' on site visit. The Receiver was informed that Asset Sales had concerns regarding the status and condition of a number of assets that formed part of the Accepted Auction Tender.

26. On September 21 and 22, 2010, the Receiver had discussions with Asset Sales in an effort to address Asset Sales' concerns over certain of the assets subject to the Accepted Auction Tender. Following such discussions, the Receiver and Asset Sales agreed to an adjustment to the Accepted Auction Tender to remove certain assets from the calculation of the guarantee amount and to account for refurbishment costs to be incurred by Asset Sales with respect to certain assets. The parties also agreed to have Asset Sales sell certain of the assets removed from the calculation of the net minimum guarantee amount for a sales commission. A copy of the correspondence between the Receiver and Asset Sales detailing the adjustments to Accepted Auction Tender will be attached as an appendix to the Supplemental Report.

27. Notwithstanding the adjustments made to the Accepted Auction Tender, such tender still represents the highest guaranteed net minimum return for the Respondents' receivership estates compared to the other auctioneer tenders and exceeds the cumulative highest individual tenders received from all other tenders for the purchase of these specific assets.

<u>Acceptance of Tenders</u>

28. The Receiver discussed its tender acceptance recommendations with representatives from the Province of New Brunswick, the Bank and Aviva Surety prior to the delivery of tender acceptances. The Receiver understands that such parties have the primary interest in the results of the tender process by virtue of their respective security over the Atcon

Eastern Assets. The Receiver notes that no objections to the proposed tender acceptance recommendations were raised by these parties.

29. On September 10, 2010, the Receiver notified each of the parties that had submitted tenders, including auction tenders, for the Atcon Eastern Assets and confirmed that their tenders had either been rejected by the Receiver and their deposit cheques were being returned to them, or that their tenders were being accepted, subject to the approval of this Honourable Court. The deposits that accompanied the Accepted Individual Tenders and the Accepted Auction Tender, as required under the Tender Process, have been deposited into the Receiver's trust account.

30. As noted above, the Receiver is in a position to report that the Accepted Individual Tenders and the Accepted Auction Tender represent tenders that provide the highest net recovery to the Respondents' receivership estates in comparison to the other tenders submitted in the Tender Process. Additionally, the Receiver reports that the aggregate amount of the Accepted Individual Tenders and the net minimum guaranteed amount in the Accepted Auction Tender exceeds the aggregate appraised value of the Atcon Eastern Assets subject to the Accepted Individual Tenders and the Accepted Auction Tender.

31. The Receiver believes it has conducted an appropriate market test for the Atcon Eastern Assets in accordance with the Tender Process previously approved by this Honourable Court and that the Accepted Individual Tenders and the Accepted Auction Tenders represent an acceptable recovery to the Respondents' receivership estates. The Receiver recommends that this Honourable Court approve the sale of the Atcon Eastern Assets that are the subject of the Accepted Individual Tenders to the respective Individual Tenderers, approve the acceptance of the Accepted Auction Tender, and approve the ultimate sale of the assets by the successful auctioneer, Asset Sales, to the successful bidders at the auction to be conducted by Asset Sales.

RELIEF SOUGHT BY THE RECEIVER

32. The Receiver respectfully requests that this Honourable Court grant an Order in the form submitted by the Receiver authorizing and empowering the Receiver to sell the Atcon Eastern Assets that are the subject of the Accepted Individual Tenders to the respective

Individual Tenderers, approve the acceptance of the Accepted Auction Tender, and approve the ultimate sale of the assets by the successful auctioneer, Asset Sales to the successful bidders at the auction to be conducted by Asset Sales.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24rd day of September 2010

ERNST & YOUNG INC.
in its capacity as the Court-appointed
Receiver of the Respondents and not in its
personal or corporate capacity

By:

Paul D. Hickey, CA•CIRP
Senior Vice President