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

TENTH REPORT OF THE RECEIVER
October 22, 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 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 Inc., Dycon Construction Ltd., Atcon Structures Inc., Atcon Construction Inc. ("**Atcon Construction**") and Envirem Technologies Inc. (now known as 058545 N.B. 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 the approval of this Court in respect of any transaction in which the purchase price exceeds $100,000 or the aggregate purchase price of 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;

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

(g) apply to this Honourable Court for advice and directions in the discharge of its powers and duties under the Receivership Order.

3. The purpose of this Tenth Report is to report to this Honourable Court on matters relating to the activities of the Receiver with respect to the NL Assets (as defined below) and to recommend to this Honourable Court that it grant an Order:

(a) authorizing the sale of the Purchased Assets (as defined below) to Premier (as defined below) pursuant to the terms of the Asset Purchase Agreement (as defined below);

(b) approving the Asset Purchase Agreement; and

(c) vesting the Purchased Assets in Premier free and clear of any liens or encumbrances.

TERMS OF REFERENCE

4. In preparing this Tenth 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 the 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 Tenth Report or relied upon by the Receiver in preparing this Tenth 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 Tenth Report are in Canadian dollars unless otherwise noted.

6. Capitalized terms not defined in this Tenth 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).

NL ASSETS

8. As previously reported to this Honourable Court, Pennecon Atcon Limited Partnership, a limited partnership governed by the laws of Newfoundland and Labrador (the "**Pennecon-Atcon LP**"), is a joint venture formed between Penney Construction Ltd. and Atcon Construction for the purpose of completing all work for Contract CC-0001-Earthworks-Plant Site Development (the "**Vale Inco Contract**") for plant site development of the Long Harbour Nickel Processing Plant Site in Long Harbour, Newfoundland and Labrador (the "**Long Harbour Site**").

9. The Pennecon-Atcon LP subcontracted the work to be performed under the Vale Inco Contract to Pennecon Heavy Civil Ltd. ("**PHCL**"). To complete the services under the Vale Inco Contract, the Receiver understands that PHCL arranged for Atcon Construction to provide certain management services and rent equipment to PHCL.

10. The Receiver understands, based on its discussions with certain former management and employees of Atcon Construction, that Atcon Construction was the owner of thirteen (13) pieces of equipment situated at the Long Harbour Site (collectively, the "**NL Assets**"), being the residual pieces of Atcon equipment remaining at the Long Harbour Site after the return of a significant amount of equipment to various equipment lessors.

11. The NL Assets were located on the Long Harbour Site, a third-party controlled-access construction site to which prospective tenderers would not be permitted access to view

the NL Assets prior to submitting a tender offer. Accordingly, the Receiver determined it would have to incur transportation, handling and holding costs if it moved the NL Assets to another site that was suitable for a public sale process.

12. Pursuant to the provisions of the Receivership Order, the Receiver considered different options to market the NL Assets for the benefit of the creditors of Atcon Construction.

SALE OF PURCHASED ASSETS

Sale Method for the NL Assets

13. The Receiver considered including the NL Assets in the tender process that was to be conducted by the Receiver with respect to the Property of the Respondents located in the Province of New Brunswick, which was Property that the Receiver determined was suitable to forming the basis of potential *en bloc* sales of construction and quarry related assets (the "**Tender Process**"). However, the Receiver determined that including the NL Assets in the Tender Process would not maximize the net recovery from these assets, as the anticipated transportation, handling and holding costs to move, preserve and protect the NL Assets pending the conclusion of the Tender Process, as discussed above, would reduce the net recovery thereon.

14. As a result, the Receiver determined it would be in the best interests of the stakeholders of Atcon Construction for the Receiver to conduct a separate sale process for the sale of the NL Assets, separate and apart from the Tender Process.

15. As noted above, the NL Assets are located at the Long Harbour Site, which is approximately a ninety-minute drive from St. John's. The Receiver understands, based on its discussions with PHCL, that the Long Harbour Site is a third-party owned and controlled-access construction site and the Receiver would not be permitted to conduct an auction on site.

16. As a result of the inability of the Receiver to hold an auction at the Long Harbour Site, the Receiver initially considered holding an auction of the NL Assets at a nearby site in Newfoundland and Labrador, as a location near the Long Harbour Site would reduce transportation charges.

17. However, the Receiver was concerned that the relatively low number of units, and the nature and condition of the NL Assets, would not attract a suitably sized group of qualified buyers to attend an auction on or near the Long Harbour Site.

18. As a result, the Receiver determined that the best location for the Receiver to conduct an auction of the NL Assets would be in St. John's, NL where a sufficient number of qualified buyers might be present to view the NL Assets.

19. The Receiver arranged for Fitzpatrick's Auctioneering Services Limited ("**Fitzpatrick's**"), a reputable appraiser/auctioneer based in St. John's, to prepare an appraisal of the NL Assets. A copy of the Fitzpatrick's appraisal will be provided to the Court as an appendix to a supplemental report prior to the hearing of the motion scheduled for October 28, 2010 (the "**Supplemental Report**").

20. 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 the Asset Purchase Agreement does not close.

21. With respect to a proposed auction of the NL Assets in St. John's, any auction held in St. John's would necessitate transporting the NL Assets to St. John's from the Long Harbour Site. The Receiver estimated the cost to transport the NL Assets to St. John's to be between $15,000 to $20,000, a significant expense given the appraised value of the NL Assets. Additionally, in the event the NL Assets were sold via auction, the net realization from the NL Assets would be reduced by the auctioneer's commission, which was estimated to be in the range of 15% plus any holding costs that might be incurred to preserve and protect the NL Assets pending their eventual sale.

22. As a result of the potential costs associated with transporting the NL Assets to St. John's for an auction and the additional realization and holding costs associated with such a process, the Receiver determined that it would be beneficial to consider whether another avenue for realization of the NL Assets existed other than an auction.

23. The Receiver understands that Pennecon-Atcon LP, PHCL and its affiliates (collectively, "**Pennecon**") is a large construction company that had previously used the NL Assets in providing services under the Vale Inco Contract. The Receiver was of the view that a sale of the NL Assets to Pennecon could reduce expenses, including professional time to arrange and supervise an auction of the NL Assets, and potentially realize a value for the NL Assets equal to or greater than the alternative options detailed above.

24. Consequently, the Receiver concluded it would be in the best interests of the Atcon Construction estate to contact Pennecon to determine whether it would be interested in buying the NL Assets.

Purchased Assets and Asset Purchase Agreement

25. Pennecon considered the Receiver's invitation to make an offer for the NL Assets and, following a period of negotiation, an agreement was reached in principle between the Receiver and Premier Construction Ltd. ("**Premier**"), a Pennecon affiliate, for the sale of the NL Assets to Premier.

26. However, subsequent to the agreement in principle being reached and the drafting of an agreement of purchase and sale, the list of the NL Assets was reviewed by Caterpillar Financial Services Limited ("**Caterpillar**") and it was determined that three (3) of the NL Assets were subject to a promissory note in favour of Caterpillar (the "**Excluded Assets**").

27. As a result, the Excluded Assets were removed from the assets to be sold to Premier, and the purchase price agreed to for the NL Assets detailed in **Appendix "A"** hereto (the "**Purchased Assets**") was reduced in an amount equal to the value that had been allocated to the Excluded Assets previously.

28. Following the resolution of the issue with respect to the Excluded Assets, an agreement of purchase of sale was finalized by the Receiver and Premier dated October 21, 2010 (the "**Asset Purchase Agreement**"). A redacted copy of the Asset Purchase Agreement is attached hereto as **Appendix "B"**. An unredacted copy of the Asset Purchase Agreement will be provided to the Court as an appendix to the Supplemental Report.

Acceptance of Asset Purchase Agreement

29. As noted above, prior to discussing the potential purchase by Pennecon of the NL Assets, the Receiver arranged for Fitzpatrick's to prepare an appraisal of the NL Assets. Fitzpatrick's appraisal provided an aggregate estimated liquidation value ("**ELV**") of the NL Assets, but did not provide an ELV for the NL Assets on an asset-by-asset basis. Fitzpatrick's did provide an estimated fair market value ("**FMV**") for the NL Assets on an asset-by-asset basis basis.

30. So that it could consider the value of the Pennecon offer for the Purchased Assets in comparison to an auction, it was necessary for the Receiver to attempt to estimate an ELV for the Purchased Assets. To reach such an estimate the Receiver used the aggregate of the individual FMVs for the NL Assets, and then determined the proportion that each of the individual FMV's of the Purchased Assets was of the aggregate FMVs of the Purchased Assets, and then used such proportion/percentage to determine an ELV for each of the NL Assets by applying that proportion/percentage to the total ELV provided by Fitzpatrick's.

31. The Receiver reports that, based on the aggregate of the individual ELVs for the Purchased Assets determined by the Receiver, and taking into consideration the estimated commission and expenses associated with the auction process, the anticipated costs to move the Purchased Assets to St. John's for an auction, the risk that an auction of the NL Assets by an auctioneer would not produce results greater than or equal to the appraised values, and the incremental professional costs of the Receiver and its counsel that would likely be incurred in arranging a second sale process in the Province of Newfoundland & Labrador, the proposed sale of the Purchased Assets to Premier under the Asset Purchase Agreement will likely result in a higher net realization for the benefit of the stakeholders of Atcon Construction in comparison to an auction sale.

32. The Receiver discussed its acceptance recommendation with representatives from the Province of New Brunswick and the Bank prior to execution of the Asset Purchase Agreement. The Receiver understands that such parties have the primary interest in the results of the sale of the Purchased Assets by virtue of their respective security over the

NL Assets. The Receiver notes that no objections to the proposed Asset Purchase Agreement were raised by these parties.

33. As a result, the Receiver recommends that this Honourable Court approve the sale of the Purchased Assets to Premier, approve the Asset Purchase Agreement and vest the Purchased Assets in Premier free and clear of any liens or encumbrances.

RELIEF SOUGHT BY THE RECEIVER

34. The Receiver respectfully requests that this Honourable Court grant an Order in the form submitted by the Receiver:

(a) authorizing the sale of the Purchased Assets to Premier pursuant to the terms of the Asset Purchase Agreement;

(b) approving the Asset Purchase Agreement; and

(c) vesting the Purchased Assets in Premier free and clear of any liens or encumbrances.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of October 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

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APPENDIX “A”

PURCHASED ASSETS

Description	Serial Number	Unit Number	Equipment Number
Telsmith Screen, 8/24	6166	SC-4	100046
Trac Feeder	AISBF-20172-01-2006	FE-4	100621
Trac Feeder	AISBF-20172-02-2006	FE-5	100622
2000 Stoughton Van Trailer, AVW 53'	1DW1A5326YS379303	VT-17	100323
Stoughton Office Van Trailer, AVW 53'	1DW1A5325XS230458	VT-25	100417
Compressor Inger Rand, CFM dual Model 185	4FVCBBAA06U370654	CO-7	100441
Shop Made Conveyor 42" x 81ft	n/a	CV- 2	100148
2005 Chevrolet 3/4 ton 2wd Truck	1GCHC24U35E333662	00117	00117
2005 Chevrolet 3/4 ton 2wd Truck	1GCHC24U75E329081	00105	00105
Trac Feeder	AISBF-20172-01-2006	FE-4	100621
Trac Feeder	AISBF-20172-02-2006	FE-5	100622