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

FIFTEENTH REPORT OF THE RECEIVER
(Approval of Sale of Airport Hanger)
December 1, 2010

INTRODUCTION AND PURPOSE

1. In connection with the applications of The Bank of Nova Scotia 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. ("**EYI**") 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. ("**Atcon Logistics**") pursuant to the Receivership Order dated March 2, 2010 (the "**March 2 Order**"); and

    (b) Atcon Construction Inc., Atcon Management Services Inc., Atcon Civil Ltd., Dycon Construction Ltd., Atcon Structures Inc. and Envirem Technologies Inc. (now known as 058545 N.B. Inc.) pursuant to an Order dated March 30, 2010 granted in these proceedings (the "**March 30 Order**", and the March 30 Order together with the March 2 Order, the "**Receivership Order**).

2. The Receivership Order authorized the Receiver to, among other things:

    (a) take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

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

    (c) engage consultants, appraisers, agents and experts, among other persons, to assist with the exercise of the Receiver's powers and duties;

    (d) 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;

(e) 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 all transactions less than $100,000 exceeds $1,000,000; and

(f) 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.

3. The purpose of this Fifteenth Report is to report to this Honourable Court on the status of matters relating to the Airport Hanger (as defined below) and recommend that this Honourable Court grant an Order authorizing the Receiver to sell the Airport Hanger, authorizing and approving the execution of the APS (as defined below) by the Receiver, authorizing and directing the Receiver to take such steps and execute such additional documents as may be necessary or desirable for the completion of the Airport Hanger sale transaction, vesting the Airport Hanger in and to the Purchaser (as defined below) free and clear of any liens or encumbrances, and authorizing and empowering the Receiver to utilize the net sale proceeds of the Airport Hanger for the purpose of making payments (including interim payments) required or permitted by the Receivership Order.

TERMS OF REFERENCE

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

6. Capitalized terms not defined in this Fifteenth 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).

AIRPORT HANGER

8. EYI was appointed as Receiver of the Property of Atcon Logistics pursuant to the March 2 Order. Following its appointment, and in accordance with the provisions of the Receivership Order, the Receiver performed a review of the books, records and asset listings of Atcon Logistics.

9. The Property of Atcon Logistics includes an airport hanger (the "**Airport Hanger**") situated on land leased by Atcon Logistics from the Miramichi Airport Commission (1993) Inc. ("**MAC**") municipally known as 50 Airport Road, Miramichi, New Brunswick and identified as Parcel 2 on Airport Apron, West side of Plan of Survey 92-14-2 ("**50 Airport Road**").

10. The Receiver understands that Atcon Logistics entered into a lease with MAC with respect to 50 Airport Road, which was effective on December 1, 2005 and had a twenty (20) year term. The Receiver also understands that: (i) Atcon Logistics purchased the Airport Hanger in December 2005 for a purchase price of $150,000; (ii) Atcon Logistics made improvements to the Airport Hanger following the purchase, bringing the total cost incurred by Atcon Logistics for the Airport Hanger to approximately $224,976; (iii) the Airport Hanger had a net book value of $191,572.28 on the books and records of Atcon Logistics; and (iv) the Airport Hanger had an assessed tax value in 2010 of approximately $143,700.

11. During the summer months of 2010, the Receiver was presented with three unsolicited offers to purchase the Airport Hanger in the amounts of $1.00, $25,000 and $95,000. The Receiver rejected the two lowest unsolicited offers, each presented by MAC, on the basis that they were of insufficient value. The third unsolicited offer for $95,000, which was from Bryce Holdings Inc. (the "**Purchaser**"), was also rejected on the basis that the offer was of insufficient value. The Receiver advised both parties of its intentions to offer the Airport Hanger for sale through a public sales process at a later point in time.

12. On October 29, 2010, the Receiver, pursuant to the powers contained in paragraphs 3(e) and (m) of the Receivership Order, entered into a listing agreement with a licensed real estate agent, RE/MAX 3000 Ltd./Ltee ("**Re/Max**"), for the marketing and sale of the Airport Hanger. Attached hereto and marked as **Appendix "A"** is a copy of the Listing Agreement (Authority to Sell) dated October 29, 2010.

13. Re/Max discussed with the Receiver the estimated value of the Airport Hanger, as it was Re/Max's view that the Airport Hanger is a unique type of property in Miramichi, New Brunswick. Re/Max informed the Receiver that, in its opinion, an appropriate listing price for the Airport Hanger at that time was $199,000.

14. Accordingly, based on the unsolicited offers previously received and the advice received from Re/Max, the Receiver agreed to have the Airport Hanger listed at $199,000 on the Multiple Listing Service ("**MLS**").

15. Subsequent to the Airport Hanger being listed on the MLS, the Purchaser contacted the Receiver and verbally offered to purchase the Airport Hanger for $150,000. The Receiver advised the Purchaser that $150,000 was not acceptable, and that all future communications with respect to the Airport Hanger should be made through Re/Max, acting as the Receiver's real estate agent.

16. On November 10, 2010, the Purchaser contacted Re/Max and submitted a formal offer to purchase the Airport Hanger for $160,000. On November 12, 2010, a second interested buyer contacted Re/Max and submitted an offer to purchase the Airport Hanger for $112,500.

17. The Receiver sent a counter-offer to the Purchaser in the amount of $170,000, which was rejected by the Purchaser. The Purchaser confirmed that it was not prepared to increase its offer above $160,000. The Receiver instructed Re/Max to contact the second offering party and determine if it was prepared to increase its offer to $170,000. The second party confirmed that it was not prepared to increase its offer above $112,500.

18. The Receiver reviewed the Purchaser's offer with Re/Max, who indicated that the $160,000 offer represented, in its opinion, a reasonable value for the Airport Hanger. As such, on November 12, 2010 the Purchaser's offer was accepted by the Receiver, subject to the approval of this Honourable Court. Attached hereto and marked as **Appendix "B"** is a copy of the agreement of purchase and sale dated November 12, 2010 (the "**APS**").

19. The APS provides that the Airport Hanger is being sold to the Purchaser on an "as is, where is" basis. However, as detailed in paragraph 15 of the APS, the agreement is subject to the Purchaser securing a satisfactory lease agreement with MAC for 50 Airport Road on or before November 19, 2010. If a satisfactory lease agreement cannot be reached, the agreement will become null and void.

20. The Receiver reports that the Purchaser and the Receiver agreed to an extension of the deadline for the Purchaser to secure a satisfactory lease agreement with MAC to November 30, 2010. The Receiver further reports that it received written confirmation from the Purchaser on November 30, 2010 that the Purchaser has secured a satisfactory lease agreement with MAC, satisfying the condition contained in the APS.

21. After reviewing the APS and obtaining the view of Re/Max as to the reasonableness of the purchase price, the Receiver believes that the APS is the superior offer received for the Airport Hanger and recommends that the APS be approved by this Honourable Court. The only reasonable alternative to a sale of the Airport Hanger under the APS would be the continued listing of the Airport Hanger on MLS, which does not guarantee a sale will be successfully completed at the same or higher price as contained in the APS, which is approximately eighty per cent (80%) of the listing price and eighty-four percent (84%) of the net book value of the Airport Hanger.

22. Accordingly, the Receiver believes it has conducted an appropriate market test for the Airport Hanger and recommends that this Honourable Court authorize the Receiver to enter into the APS and approve the sale of the Airport Hanger pursuant to the APS.

RELIEF SOUGHT BY THE RECEIVER

23. The Receiver respectfully requests that this Court grant an order authorizing the Receiver to sell the Airport Hanger, authorizing and approving the execution of the APS by the Receiver, authorizing and directing the Receiver to take such steps and execute such additional documents as may be necessary or desirable for the completion of the Airport Hanger sale transaction, vesting the Airport Hanger in and to the Purchaser free and clear of any liens or encumbrances, and authorizing and empowering the Receiver to utilize the net sale proceeds of the Airport Hanger for the purpose of making payments (including interim payments) required or permitted by the Receivership Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 1st day of December 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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