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

SIXTEENTH REPORT OF THE RECEIVER
(Auction/Sale of Assets located at the Walsh Street Property)
January 5, 2011

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. 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. and Envirem Technologies Inc. (now known as 058545 N.B. Inc.) pursuant to an Order dated March 30, 2010 (the "**March 30 Order**", and the March 30 Order 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 all transactions less than $100,000 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) engage consultants, appraisers, agents, experts and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by the Receivership Order; and

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

3. The purpose of this Sixteenth Report is to report to this Honourable Court on matters relating to the activities of the Receiver relating to the Walsh Street Property (as defined herein).

TERMS OF REFERENCE

4. In preparing this Sixteenth 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 and PwC (as defined herein), the books and records of the Respondents, discussions with the management and employees of the Respondents and PwC, 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 Sixteenth Report or relied upon by the Receiver in preparing this Sixteenth 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 their officers or employees or in the information.

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

6. Capitalized terms not defined in this Sixteenth 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).

WALSH STREET PROPERTY

8. Pursuant to the provisions of the March 2 Order, EYI was appointed as Receiver of the Property of Atcon Property Holdings Inc. ("**APHI**"). APHI is the registered owner of the real property and commercial building municipally known as 170 Walsh Street, Miramichi, New Brunswick (the "**Walsh Street Property**"). As a result, any sale of the Walsh Street Property is subject to the provisions of the Receivership Order. Attached hereto and marked as **Appendix "A"** is a copy of the Certificate of Registered Ownership for the Walsh Street Property, PID 40206989, dated January 4, 2011.

9. The Receiver understands that the Walsh Street Property was leased by APHI to an affiliated company, Atcon Industrial Services Inc. ("**Atcon Industrial**"), which previously conducted business at the Walsh Street Property. The Receiver understands that Atcon Industrial's machining division occupied the Walsh Street Property up to March 30, 2010. As a result, the Receiver understands that there were, and still remain, significant amounts of equipment owned by Atcon Industrial located at the Walsh Street Property (the "**AIS Machining Equipment**").

10. On March 30, 2010, PricewaterhouseCoopers Inc. was appointed by this Honourable Court as receiver and receiver manager of the property, assets and undertakings of Atcon Industrial ("**PwC**") in proceedings bearing Court File No. N/M/26/10 (the "**Atcon Industrial Proceedings**").

11. Since its appointment on March 1, 2010, the Receiver has secured, insured and maintained the Walsh Street Property in accordance with the provisions of the Receivership Order. Following PwC's appointment as receiver and receiver manager of Atcon Industrial on March 30, 2010, PwC and the Receiver discussed potential methods to realize upon the AIS Machining Equipment and the Walsh Street Property in a co-

ordinated manner that would facilitate the greatest recovery being achieved for the stakeholders of Atcon Industrial and APHI, avoid the unnecessary duplication of realization efforts and costs and create employment opportunities in the Miramichi area.

12. The Receiver and PwC agreed that a going concern or *en bloc* sale of the AIS Machining Equipment and the Walsh Street Property would be in the best interests of the stakeholders of both Atcon Industrial and APHI, as any such sale: (i) would be the sale of a turn-key operation; (ii) would likely generate the highest return for the stakeholders with an interest in the assets; and (iii) would have the potential to create employment opportunities in the Miramichi area.

13. As the vast majority of the assets that would be subject to any such going concern sale, being the AIS Machining Equipment, are subject to the Atcon Industrial Proceeding, the Receiver considered it prudent to defer listing the Walsh Street Property for sale to allow PwC time to conduct its marketing efforts with respect to the AIS Machining Equipment, as PwC's efforts could potentially secure a going concern sale of both the AIS Machining Equipment and the Walsh Street Property.

14. The Receiver understands that in July 2010, PwC entered into negotiations with a potential going concern buyer for the AIS Machining Equipment and the Walsh Street Property. However, such negotiations failed to result in a binding agreement being entered into between the parties.

15. On November 22, 2010, PwC notified the Receiver that it was contemplating accepting a net minimum guarantee offer from Infinity Asset Solutions Inc. ("**Infinity**"), along with its joint venture partners Plant & Machinery Inc. and Machinery Network Auctions, with respect to the AIS Machining Equipment. The net minimum guarantee offer provided for, first, a going concern sale offering for the AIS Machining Equipment and the Walsh Street Property, then, if necessary, an on-site public auction sale of the AIS Machining Equipment. The Receiver has reviewed a copy of the Third Report of PwC dated as of December 22, 2010 in the Atcon Industrial Proceeding, which has a copy of the auction agreement dated November 25, 2010 between PwC and Infinity (the "**Auction Agreement**") attached thereto as Appendix "D".

16. The Receiver understands, based on its discussions with PwC and its review of the Auction Agreement, that, in the event the Auction Agreement is approved by this Honourable Court, Infinity and its joint venture partners intend to spend between 30 and 45 days seeking going concern offers for the AIS machining business, which potential going concern sale may include the AIS Machining Equipment and the Walsh Street Property, by marketing the assets to its “worldwide database”. However, if a going concern sale does not materialize, Infinity proposes to auction the AIS Machining Equipment directly from the Walsh Street Property within 125 days of PwC obtaining Court approval of the Auction Agreement.

17. PwC sought the Receiver’s position on the proposed sales approach under the Auction Agreement with respect to the AIS Machining Equipment and the Walsh Street Property, which would see either:

    (a) the Walsh Street Property included in a going concern sale resulting from the Infinity sales process under the Auction Agreement, subject to the Receiver’s consent to the going concern offer and the approval of this Honourable Court to the sale of the Walsh Street Property; or

    (b) PwC and Infinity requiring exclusive unrestricted access to the Walsh Street Property for a period of time, such that an auction of the AIS Machining Equipment could be conducted from the Walsh Street Property, and the subsequent listing by the Receiver of the Walsh Street Property with a real estate broker.

18. On November 30, 2010, December 14, 2010 and January 4, 2011, the Receiver confirmed to PwC that it was prepared to co-operate with PwC with respect to the proposed sales process under the Auction Agreement, subject to acceptable arrangements being negotiated by the Receiver and PwC to address various issues, including but not limited to:

    (a) liability insurance concerns;

    (b) cost and proceed allocations; and

(c) obligations to clean and repair any damage to the Walsh Street Property that may occur during Infinity's marketing process or during the removal of the AIS Machining Equipment from the Walsh Street Property, if necessary.

19. The Receiver and PwC have agreed in principal to the terms of an access and proceeds/cost sharing agreement whereby PwC and Infinity will be granted unrestricted access to the Walsh Street Property for the purpose of marketing the AIS machining business to going concern buyers, and if such a process fails to result in a going concern sale of the AIS Machining Equipment and the Walsh Street Property, to conduct an auction of the AIS Machining Equipment directly from the Walsh Street Property. The Receiver has informed PwC that any going concern offer that includes the Walsh Street Property that is received by Infinity is subject to the Receiver's consent, following the Receiver's consideration of the offer, and the approval of this Honourable Court.

20. The Receiver recommends that this Honourable Court approve the Auction Agreement, as it provides for a going concern marketing and sales process to be conducted with respect to the Walsh Street Property that has the possibility of resulting in a going concern sale of the AIS Machining Equipment and the Walsh Street Property, which, if completed, may result in benefits for the Miramichi community and economy, higher realizations being generated for the stakeholders of Atcon Industrial and APHI and minimal duplication of costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of January 2011.

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

APPENDIX “A”

Form 47
Formule 47

CERTIFICATE OF REGISTERED OWNERSHIP
CERTIFICAT DE PROPRIÉTÉ ENREGISTRÉE

Land Titles Act, S.N.B. 1981, c. L-1.1, s.63
Loi sur l'enregistrement foncier, L.N.-B. de 1981, chap. L-11, art. 63

Parcel Identifier | Numéro d'identification de parcelle :

40206989

Owner | Propriétaire :

Atcon Property Holdings Inc.
626 Newcastle BLVD
Miramichi NB
E1V 2L3
Deed/Transfer | Acte de transfert/Transfert
Northumberland 2006-11-07 - 23036271

Manner of Tenure | Mode de tenure :

Not Applicable | Sans objet

Encumbrances | Charges :

ROYNAT INC.
644 Main ST
Moncton NB
E1C 1E7
Debenture Holder | Titulaire de la débenture
Debenture or Other Voluntary Charge | Débenture ou autre charge facultative
Northumberland 1999-07-30 1153 - 168 10387810

Irving Oil Limited
10 Sydney ST
Saint John NB
E2L 4K1
Claimant | Réclamant
Notice of Security Interest | Avis de sûreté
Northumberland 2003-05-27 - 16305204

Bank of Nova Scotia
Business Service Centre
5251 Duke ST Floor 7th Floor
Halifax NS
B3J 1P3
Debenture Holder | Titulaire de la débenture
Debenture or Other Voluntary Charge | Débenture ou autre charge facultative
Northumberland 2006-04-04 - 21917886

Bank of Nova Scotia
Business Service Centre
5251 Duke ST Floor 7th Floor
Halifax NS
B3J 1P3
Debenture Holder | Titulaire de la débenture
Debenture or Other Voluntary Charge | Débenture ou autre charge facultative
Northumberland 2006-04-04 - 21918132

Bank of Nova Scotia
Business Service Centre
5251 Duke ST Floor 7th Floor
Halifax NS
B3J 1P3
Debenture Holder | Titulaire de la débenture
Assignment of Mortgage or Charge | Cession d'hypothèque ou de charge
Northumberland 2009-07-07 - 27394502

Bank of Nova Scotia
Business Service Centre
5251 Duke ST Floor 7th Floor
Halifax NS
B3J 1P3
Debenture Holder | Titulaire de la débenture
Assignment of Mortgage or Charge | Cession d'hypothèque ou de charge
Northumberland 2009-07-07 - 27394528

Instruments in the Registration Process | Instruments dans le processus d'enregistrement :

NONE | AUCUN

THIS IS TO CERTIFY THAT the specified owner is the registered owner and holds title in fee simple, by virtue of the specified instrument(s) and in the specified manner of tenure, to the specified parcel, described in Schedule "A" attached hereto. The title to the land is subject to the overriding incidents specified in subsection 17(4) of the Act and also to the specified encumbrances.
LE PRÉSENT CERTIFICAT ATTESTE QUE le propriétaire spécifié est le propriétaire enregistré et est titulaire du titre en fief simple, en vertu de(s) l'instrument(s) spécifié(s), selon le mode spécifié de tenure de la parcelle spécifiée, décrite à l'Annexe <<A>> ci-jointe. Le titre du bien-fonds est soumis aux réserves dérogatoires précisées au paragraphe 17(4) de la Loi et également aux charges spécifées.

THE TITLE TO THE LAND may be subject to the specified instruments, which have been entered in the instrument record and may be entered on the title register when the registration process is completed.
LE TITRE DU BIEN-FONDS peut être soumis aux instruments spécifiés qui ont été portés au registre des instruments et qui peuvent être portés au registre des titres lorsque la procédure d'enregistrement est achevée.

THIS CERTIFICATE is evidence of the particulars contained herein as of the date and time of its issue. The description is not conclusive as to the boundaries or extent of the land.
LE PRÉSENT CERTIFICAT constitue la preuve des renseignements qu'il contient à la date et à l'heure de sa délivrance. La description n'est pas probante en ce qui concerne les limites ou l'étendue du bien-fonds.

Date & Time | Date et heure : 2011-01-04 10:02:14

Registrar of Land Titles for the District of New Brunswick

Le registrateur des titres de biens-fonds de la Circonscription du Nouveau-Brunswick

Report ID | Rapport ID : 3300069

Schedule A | Annexe A

PID | NID : 40206989

Apparent Parcel Access | Accès apparent à la parcelle : Public Access | Accès public

Status | État de la demande : Current | Courant

Effective Date/Time | Date et heure de prise d'effet : 2006-03-13 14:14:35

Legal Description | Description officielle :

That parcel of land and premises being in:

Place Name: Chatham, City of Miramichi
Parish: Chatham
County: Northumberland
Label of Parcel on Plan: Parcel A
Title of Plan: TOWN OF CHATHAM INDUSTRIAL PARK SUBDIVISION
Registration County: Northumberland
Registration Number of Plan: 149
Registration Date of Plan: August 28, 1973