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

SEVENTEENTH REPORT OF THE RECEIVER
(Approval of Sale of 170 Walsh Street)
May 5, 2011

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 of the property, assets and undertakings of the following entities (the "**Receiver**"):

   (a) Atcon Group Inc., Atcon Holdings Inc., Atcon Property Holdings Inc. ("**APHI**"), Atcon Veneer Products Inc. and Atcon Logistics Inc. 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 Seventeenth Report is to report to this Honourable Court on the status of matters relating to the Walsh Street Property (as defined below) and recommend that this Honourable Court grant an order approving the APS (as defined below), approving the execution of the APS by the Receiver, vesting the Walsh Street Property 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 Walsh Street Property for the purpose of making payments (including interim payments) required or permitted by the Receivership Order.

TERMS OF REFERENCE

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

6. Capitalized terms not defined in this Seventeenth 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

Background

8. APHI, a Respondent in these proceedings, is the registered owner of the real property and commercial building municipally known as 170 Walsh Street, Miramichi, New Brunswick, PID 40206989 (the "**Walsh Street Property**"). Attached hereto as **Appendix "A"** is a copy of a Certificate of Registered Ownership for the Walsh Street Property dated May 4, 2011 (the "**Certificat**e").

9. As set out in the Certificate, the Walsh Street Property is subject to the following registered encumbrances:

   (a) a debenture or other voluntary charge registered in favour of Roynat Inc. ("**Roynat**") on July 30, 1999, bearing registration number 10387810;

   (b) a notice of security interest registered in favour of Irving Oil Limited ("**Irving**") on May 27, 2003, bearing registration number 16305204; and

   (c) debentures and assignments of mortgage or charge registered in favour of the Bank (the "**Bank Registrations**").

10. With respect to the Roynat registration, counsel to the Receiver has received written confirmation from a representative of Roynat that no amounts are owed to Roynat in connection with the debenture, and Roynat is prepared to consent to a discharge of the registration. Counsel to Roynat has also confirmed to the Receiver in writing that the Roynat debenture has been satisfied and may be discharged.

11. With respect to the Irving registration, attached hereto as **Appendix "B"** is a copy of the Notice of Security Interest registered by Irving against the Walsh Street Property (the "**Notice**"). According to the Notice, it was registered by Irving pursuant to section 49(2) of the New Brunswick PPSA to provide notice that a security interest in a fixture or crop attached to the land had been created in specific collateral in favour of Irving. The Notice identifies the owner of the Walsh Street Property as Arvin Special Machinery Ltd. ("**Arvin**"), which, the Receiver understands, is a predecessor to Atcon Construction Inc. by way of amalgamation. The Notice states that the registration is effective for five (5) years from the date of registration, which was May 27, 2003. As a result, it appears that the registration of the Notice lapsed on May 27, 2008.

12. The Receiver contacted Irving's business office on May 5, 2011 and was informed by an Irving representative that:

    (a) Irving had a single account with Arvin for service to the Walsh Street Property;

    (b) the Walsh Street Property account was closed in April 2009 and there is no balance owing for services or goods situated at the Walsh Street Property; and

    (c) there have been no deliveries of product or rental charges billed in relation to the Walsh Street Property since April 2009, and it appears that the collateral listed in the Notice was paid in full prior to 2007.

13. With respect to the Bank Registrations, counsel to the Bank has confirmed to the Receiver in writing that the Bank Registrations have been, or will be, assigned to the Province of New Brunswick (the "**Province**"). Counsel to the Bank has also confirmed that the Bank holds no other security with respect to the Walsh Street Property.

<u>**AIS and Auction**</u>

14. As previously noted in the Sixteenth Report of the Receiver dated January 5, 2011 (the "**Sixteenth Report**"), the Walsh Street Property was leased by APHI to an affiliated company, Atcon Industrial Services Inc. ("**AIS**"), which previously conducted business at the Walsh Street Property. PricewaterhouseCoopers Inc. ("**PwC**") was appointed by this

Honourable Court as receiver and receiver manager of the property, assets and undertakings of AIS on March 30, 2010 in proceedings bearing Court File No. N/M/26/10 (the "**AIS Proceedings**"). Attached hereto as **Appendix "C"** is a copy of the Sixteenth Report (without appendices).

15. AIS maintained a significant amount of equipment at the Walsh Street Property (the "**AIS Machining Equipment**"), which PwC sought to realize upon by way of an auction agreement dated November 25, 2010 between PwC and Infinity Asset Solutions ("**Infinity**") (the "**Auction Agreement**").

16. As outlined in the Sixteenth Report, the Receiver recommended that this Honourable Court approve the Auction Agreement, as it provided for a going concern marketing sales process to be conducted with respect to the Walsh Street Property and the AIS Machining Equipment. The Auction Agreement granted unrestricted access to the Walsh Street Property to Infinity through to May 12, 2011 to allow Infinity adequate time to pursue a potential going concern sale of the AIS business (potentially inclusive of the Walsh Street Property), or to conclude an auction of the AIS Machining Equipment in the event that an *en bloc* sale did not materialize. The terms upon which the Receiver granted access to the Walsh Street Property to Infinity were outlined in an access agreement negotiated between the Receiver, PwC and Infinity (the "**Access Agreement**").

17. The Receiver received periodic updates from PwC on the status of Infinity's pursuit of a going concern sale of the AIS business. The Receiver understands from PwC that Infinity was unable to negotiate an acceptable going concern sale for the AIS Machining Equipment. As a result, as provided for in the Auction Agreement, an auction was conducted by Infinity for the AIS Machining Equipment on April 5, 2011 at the Walsh Street Property. Pursuant to the terms of the Access Agreement, Infinity is obligated to provide vacant possession of the Walsh Street Property to the Receiver on or before May 12, 2011.

Proposed Sale of Walsh Street Property

18. On March 15, 2011, the Receiver obtained an unsolicited offer from Mr. Eugene Nowlan to purchase the Walsh Street Property. Further information with respect to the unsolicited offer will be provided to the Court in the Supplement to the Seventeenth Report dated May 5, 2011 (the "**Supplemental Report**"). 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 the sale of the Walsh Street Property.

19. As at March 15, 2011, the Receiver had not publicly listed the Walsh Street Property for sale, since, as noted in the Sixteenth Report, there was the possibility of a going concern sale of the AIS Machining Equipment and the Walsh Street Property being achieved through the efforts of Infinity. However, based on the information received from PwC that a going concern sale for the Walsh Street Property with the AIS Machining Equipment was unlikely to materialize, the Receiver decided to proceed to publicly list the Walsh Street Property with a qualified realtor in order to expose the property to the market, with a view to maximizing the net realization for the stakeholders of APHI.

20. The Receiver enlisted the services of RE/MAX 3000 Ltd. ("**Re/Max**") to list the Walsh Street Property. Based upon comparable transactions in the local marketplace, Re/Max recommended to the Receiver that the Walsh Street Property be listed with the Multiple Listing Service ("**MLS**") at an asking price of $295,000 with the expectation that any transaction that might occur would likely be at a negotiated amount lower than the listing price.

21. Prior to listing the Walsh Street Property with the MLS, the Receiver reviewed an appraisal of the Walsh Street Property commissioned by PwC and completed by A Bound Corporation, a commercial and residential real property appraiser operating in the Province of New Brunswick, dated July 19, 2010 (the "**Appraisal**"). The Appraisal provided an estimate of the liquidation market value of the Walsh Street Property as of

July 15, 2010. A copy of the Appraisal will be provided to the Court as an appendix to a Supplemental Report.

22. Based on its review of the Appraisal, and the advice received from Re/Max, the Receiver agreed to list the Walsh Street Property at an asking price of $295,000 on March 17, 2011.

23. On March 18, 2011, Mr. Eugene Nowlan, on behalf of Sunny Corner Enterprises Inc. (the "**Purchaser**"), submitted a formal offer to purchase the Walsh Street Property. The Purchaser subsequently increased its offer in writing by executing an agreement of purchase and sale dated March 22, 2011 (the "**APS**"), which included additional conditions with respect to the manner in which the property would be delivered following the conclusion of the Infinity auction process for the AIS Machining Equipment. Attached hereto as **Appendix "D"** is a redacted copy of the APS, which was executed by the Receiver on March 23, 2011, subject to the approval of this Honourable Court. An unredacted copy of the APS will be provided to the Court as an appendix to the Supplemental Report.

24. The Receiver provided a copy of the APS to PwC for its review as it contained conditions relating to the Infinity auction process. PwC subsequently confirmed to the Receiver that the Walsh Street Property would be returned to the Receiver in accordance with the Purchaser's conditions in the APS.

25. The Receiver, following a review of the APS, a consideration of the appraised value of the Walsh Street Property contained in the Appraisal, and obtaining the view of Re/Max as to the reasonableness of the purchase price offered by the Purchaser, and having confirmed that the Walsh Street Property would be returned to the Receiver in accordance with the Purchaser's conditions by Infinity, executed the APS, subject to the approval of this Honourable Court.

26. The Receiver believes that the APS provides a reasonable realization for the Walsh Street Property and recommends that the APS be approved by this Honourable Court. It is the Receiver's view that the only reasonable alternative to a sale of the Walsh Street Property

under the APS would be the continued listing of the Walsh Street Property on the MLS, which does not guarantee a sale will be successfully completed at the same or higher price as contained in the APS, which is equal to the Walsh Street Property's appraised value contained in the Appraisal.

27. The Receiver had discussed the terms of the APS with a representative of the Province, being the stakeholder with the likely sole interest in the proceeds of sale of the Walsh Street Property. The Province has confirmed to the Receiver its support for the sale of the Walsh Street Property to the Purchaser pursuant to the terms and conditions of the APS.

28. Accordingly, the Receiver recommends that this Honourable Court authorize the Receiver to enter into the APS and approve the sale of the Walsh Street Property pursuant to the APS.

RELIEF SOUGHT BY THE RECEIVER

29. The Receiver respectfully requests that this Court grant an order 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 Walsh Street Property sale transaction, vesting the Walsh Street Property 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 Walsh Street Property for the purpose of making payments (including interim payments) required or permitted by the Receivership Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of May 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