

**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

**NINETEENTH REPORT OF THE RECEIVER
(Sale of the Nelson Street Properties and the St. Patrick's Drive Property)
July 19, 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. (“**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 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) 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 Nineteenth Report is to report to this Honourable Court on matters relating to the activities of the Receiver relating to the Nelson Street Properties (as defined below) and the St. Patrick's Drive Property (as defined below) and request that this Honourable Court grant an Order:
- (a) authorizing the Receiver to sell the Nelson Street Properties and the St. Patrick's Drive Property to the Purchaser (as defined below);
 - (b) 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 sale transaction;
 - (c) vesting the Nelson Street Properties and the St. Patrick's Drive Property in and to the Purchaser free and clear of any liens or encumbrances upon delivery of the Receiver's Certificate to the Purchaser; and
 - (d) authorizing and empowering the Receiver to utilize the net sale proceeds of the Nelson Street Properties and the St. Patrick's Drive Property for the purpose of making payments (including interim payments) required or permitted by the Receivership Order.

TERMS OF REFERENCE

4. In preparing this Nineteenth 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 PwC (as defined below), 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 Nineteenth Report or relied upon by the Receiver in preparing this Nineteenth 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 Nineteenth Report are in Canadian dollars unless otherwise noted.
6. Capitalized terms not defined in this Nineteenth 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).

Nelson Street Properties

8. EYI was appointed by this Honourable Court as Receiver of the property, assets and undertakings of Atcon Management Services Inc. ("**AMSI**") pursuant to the March 30 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 AMSI.
9. The Receiver understands, based on its review of the books and records of AMSI, that AMSI is the registered owner of parcels of real property located on Nelson Street in

Miramichi, New Brunswick and identified as PID 40221426, PID 40219941, and PID 40221434 (collectively, the “**Nelson Street Properties**”). The Receiver further understands that the Nelson Street Properties have not been converted to the Land Titles system and thus Certificates of Registered Ownership are not available.

10. The Receiver understands that the Nelson Street Properties comprise approximately 3.97 acres and are located across from the plywood mill formerly operated by Atcon Plywood Inc. (“**Atcon Plywood**”) in Miramichi. The Receiver further understands that an irreparable warehouse is situated on PID 40221426, and PID 40219941 and PID 40221434 represent land previously used as parking lots when the plywood mill was operational.

St. Patrick’s Drive Property

11. AMSI is the registered owner of a parcel of real property located on St. Patrick’s Drive in Miramichi, New Brunswick and identified as PID 40466039 (the “**St. Patrick’s Drive Property**”). Attached hereto as **Appendix “A”** is a copy of the Certificate of Registered Ownership for the St. Patrick’s Drive Property dated July 18, 2011.
12. The Receiver understands that the St. Patrick’s Drive Property is approximately 5716 sq metres and is located near the plywood mill formerly operated by Atcon Plywood.

Tender Process

13. As is set out in greater detail in the Fifth Report of the Receiver dated July 23, 2010, the Receiver brought a motion returnable on 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**”).
14. Pursuant to the Order of Justice Riordon dated July 28, 2010, this Honourable Court approved the Tender Process and authorized and empowered the Receiver to carry out and conduct the Tender Process in accordance with the terms set out in the Receiver’s tender information package.

15. The Nelson Street Properties and the St. Patrick's Drive Property were included in the Property of the Respondents subject to the Tender Process. The Nelson Street Properties were identified as Parcel 5.6 and the St. Patrick's Drive Property was identified as Parcel 5.15.
16. As is set out in greater detail in the Seventh Report of the Receiver dated September 24, 2010 (the "**Seventh Report**"), the Receiver completed the Tender Process and requested that this Honourable Court grant Orders authorizing and empowering the Receiver to sell certain assets to parties that submitted tenders in the Tender Process that were accepted by the Receiver. Attached hereto as **Appendix "B"** is a copy of the Seventh Report (without appendices).
17. As noted in the Seventh Report Mr. Terrence Kelly submitted tenders for the Nelson Street Properties and the St. Patrick's Drive Property that were accepted by the Receiver. Pursuant to the Approval and Vesting Order dated September 29, 2010 (the "**Approval and Vesting Order**"), the sale of the Nelson Street Properties and the St. Patrick's Drive Property to Mr. Kelly was approved by this Honourable Court. Attached hereto as **Appendix "C"** is a copy of the Approval and Vesting Order.
18. Following the granting of the Approval and Vesting Order, Mr. Kelly withdrew his tender for the Nelson Street Properties and the St. Patrick's Drive Property and the sale transaction with Mr. Kelly was not completed.

Sale of the Properties

19. Following Mr. Kelly's withdrawal of his tender to acquire the Nelson Street Properties and the St. Patrick's Drive Property, the Receiver entered into listing arrangements with RE/MAX 3000 Ltd./Ltee ("**Re/Max**") dated December 21, 2010 for the marketing and sale of the Nelson Street Properties and the St. Patrick's Drive Property.
20. The Receiver discussed with Re/Max the estimated value of the Nelson Street Properties and the St. Patrick's Drive Property and Re/Max informed the Receiver that, in its opinion, an appropriate aggregate listing price for the Nelson Street Properties was \$14,000, and an appropriate listing price for the St. Patrick's Drive Property was \$24,900. Accordingly, based on the advice received from Re/Max, and based on the appraisal

obtained by the Receiver for the Nelson Street Properties and the St. Patrick's Drive Property, the Receiver agreed to list the properties at such amounts with the Multiple Listing Service ("**MLS**").

21. A summary of the appraisal of A Bound Corporation dated August 20, 2010 and effective as of July 26, 2010 with respect to the Nelson Street Properties and the St. Patrick's Drive Property will be appended to a supplemental report to be filed by the Receiver with this Honourable Court dated July 19, 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 Nelson Street Properties and the St. Patrick's Drive Property in the event that the proposed sale transaction with the Purchaser is not approved by this Honourable Court.
22. The Receiver reports to this Honourable Court that the Nelson Street Properties and the St. Patrick's Drive Property were listed on the MLS for 210 days, from December 21, 2010 to June 30, 2011. During that time period, no site viewings were conducted and no offers were received for the properties.
23. On May 17, 2011, the Receiver was informed by PwC that it was in the process of completing an *en bloc* marketing of the assets of Atcon Plywood, which included lands adjacent to the Nelson Street Properties and the St. Patrick's Drive Property, and that it was prepared to solicit offers for and negotiate an *en bloc* sale that would include the Nelson Street Properties and the St. Patrick's Drive Property.
24. Following its discussions with PwC, and given the lack of offers received during the MLS listing, the Receiver was of the view that the best method to maximize realizations for the Nelson Street Properties and the St. Patrick's Drive Property was through an *en bloc* marketing of the assets of Atcon Plywood by PwC that included the Nelson Street Properties and the St. Patrick's Drive Property.
25. The Receiver has reviewed a copy of the First Report of PwC dated as of June 7, 2011 in the Atcon Plywood receivership proceeding bearing Court File No. N/M/26/10, and the Receiver understands that an offer was received by PwC from 7013272 Canada Inc. (the

“**Purchaser**”) that provided for the sale of the Nelson Street Properties and the St. Patrick’s Drive Property in the aggregate amount of \$21,000, with a purchase price allocation by PwC of \$21,500, as follows:

- (a) Nelson Street Properties:
 - (i) PID 40221426 - \$2,500
 - (ii) PID 40219941 - \$8,000
 - (iii) PID 40221434 - 6,000; and
- (b) St. Patrick’s Drive Property - \$5,000.

- 26. The Receiver has reviewed the Offer of the Purchaser dated May 9, 2011 (the “**Offer**”) with respect to the proposed sale of, among other things, the Nelson Street Properties and the St. Patrick’s Drive Property. The Receiver understands that the Offer was included as an appendix to the First Report of PwC dated as of June 7, 2011.
- 27. As noted above, the Receiver previously obtained an appraisal of the Nelson Street Properties and the St. Patrick’s Drive Property, and the Receiver is of the view that the price to be received by the Receiver for the Nelson Street Properties and the St. Patrick’s Drive Property is supported by the appraised value of the Nelson Street Properties and the St. Patrick’s Drive Property and provides for a reasonable realization on the Nelson Street Properties and the St. Patrick’s Drive Property for the stakeholders of AMSI.
- 28. The Receiver understands that PwC will be seeking the approval of the sale of Atcon Plywood’s assets by this Honourable Court at a motion scheduled on July 21, 2011, as the conditions under the Offer have now been satisfied and/or waiver. To the extent that this Honourable Court approves the sale of the assets of Atcon Plywood, the Receiver respectfully requests that this Honourable Court grant an Order in these proceedings that, among other things, approves the sale of the Nelson Street Properties and the St. Patrick’s Drive Property to the Purchaser and vests the Nelson Street Properties and the St. Patrick’s Drive Property to the Purchaser free and clear of all claims and encumbrances against the Nelson Street Properties and the St. Patrick’s Drive Property upon the delivery by the Receiver of a Receiver’s Certificate to the Purchaser.

RELIEF SOUGHT BY THE RECEIVER

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

- (a) authorizing the Receiver to sell the Nelson Street Properties and the St. Patrick's Drive Property to the Purchaser;
- (b) 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 sale transaction;
- (c) vesting the Nelson Street Properties and the St. Patrick's Drive Property in and to the Purchaser free and clear of any liens or encumbrances upon delivery of the Receiver's Certificate to the Purchaser; and
- (d) authorizing and empowering the Receiver to utilize the net sale proceeds of the Nelson Street Properties and the St. Patrick's Drive Property for the purpose of making payments (including interim payments) required or permitted by the Receivership Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of July 2011

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

By:



George C. Kinsman, CA•CIRP
Senior Vice President