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

TWENTY-FIRST REPORT OF THE RECEIVER
(115 Whalen Street)
August 26, 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. ("**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 without the approval of this Court in respect of any transaction not exceeding $100,000, provided that the aggregate consideration for all such transactions does not exceed $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 Twenty-First Report is to report to this Honourable Court on the proposed sale of the properties municipally known as 115 Whalen Street, Miramichi, New Brunswick, bearing Parcel Identifier Numbers 40179162 and 40277774 (the "**Whalen Lands**") to Hitchman Construction Inc. ("**Hitchman**") and to recommend that this Honourable Court grant an Order vesting the Whalen Lands in and to Hitchman free and clear of any liens or encumbrances upon delivery of the Receiver's Certificate to Hitchman.

TERMS OF REFERENCE

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

6. Capitalized terms not defined in this Twenty-First 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).

SALE OF THE WHALEN LANDS

8. EYI was appointed as Receiver of the Property of Atcon Construction Inc. ("**Atcon Construction**") 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 Atcon Construction.

9. The Property of Atcon Construction includes the Whalen Lands, which consist of approximately three acres of vacant lot in the Newcastle Industrial Park. The Receiver entered into a listing arrangement with RE/MAX 3000 Ltd./Ltee ("**Re/Max**") for the marketing and sale of the Whalen Lands on October 29, 2010, for a listing price of $49,000. No offers were presented to the Receiver while the property was listed at this price.

10. On June 30, 2011, the Receiver in consultation with Re/Max, agreed to reduce the listing price to $39,000 in an attempt to solicit interest in the property.

11. On August 2, 2011, Hitchman submitted a formal offer to purchase the Whalen Lands on an "as is, where is" basis for $32,000.

12. The Receiver notes that the Hitchman offer is under $100,000 and that if the sale to Hitchman is completed, the aggregate consideration for all transactions completed by the Receiver without the approval of this Honourable Court will continue to be under $1,000,000 in the aggregate. Accordingly, the Hitchman offer was accepted by the Receiver later that same day, without seeking Court approval, and the parties entered into

an Agreement of Purchase and Sale dated August 2, 2011 (the "**APS**"). Attached hereto as **Appendix "A"** is a copy of the APS.

13. The Receiver has conducted searches on the Whalen Lands under the *Land Titles Act* (New Brunswick) which reveal that the Whalen Lands are subject to encumbrances in favour of:

(a) Bank of Nova Scotia, a secured creditor of Atcon Construction; and

(b) Place-Crete Systems Inc., a judgment creditor of Atcon Construction.

One of the parcels of land comprising the Whalen Lands is also subject to easements in favour of Aliant Telecom Inc. and New Brunswick Power Corporation. Attached hereto as **Appendix "B"** are copies of the *Land Titles Act* search results obtained by the Receiver in respect of the Whalen Lands, with a currency date of March 30, 2011.

14. In addition to the foregoing encumbrances, the Whalen Lands form part of the Property charged by the Directors Charge, Administration Charge and DIP Lenders Charge created by the Initial Order in the *Companies' Creditors Arrangement Act* proceedings of Atcon Construction (Court File No. N/M/16/10) as well as the Administrative Charge, Receiver's Indemnity Charge and the Receiver's Borrowings Charge created by the March 2 Order and the March 30 Order in these receivership proceedings.

RELIEF SOUGHT BY THE RECEIVER

15. In order to complete the sale of the Whalen Lands to Hitchman under the APS, the Receiver must discharge and remove any encumbrances on the properties, other than the easements in favour of Aliant Telecom Inc. and New Brunswick Power Corporation. The Receiver is of the view that the most expedient and economical way to discharge the encumbrances on the Whalen Lands, for the benefit of all stakeholders of Atcon Construction, is by way of a vesting order.

16. The APS originally called for the sale to Hitchman to close on August 23, 2011. Through subsequent correspondence, Hitchman and the Receiver have agreed to extend the closing

date to September 22, 2011 to accommodate a motion to this Honourable Court for a vesting order. The Receiver intends to serve all parties with encumbrances registered on title to the Whalen Lands with a copy of this Twenty-First Report and the corresponding Notice of Motion.

17. The Receiver respectfully requests that this Court grant an order vesting the Whalen Lands in and to Hitchman free and clear of any liens or encumbrances.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of August, 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

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