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-SECOND REPORT OF THE RECEIVER

(Sale of 1 Whalen Street, Nelson Street Properties and St. Patrick's Drive Property)
July 13, 2012

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 granted in these proceedings (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 Orders**").

2. The Receivership Orders 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-Second Report is to:

(a) report to this Honourable Court on the proposed sale of 1 Whalen Street (as defined below);

(b) recommend that this Honourable Court grant an Order vesting 1 Whalen Street in and to the purchaser, Hitchman (as defined below), free and clear of any liens or encumbrances, upon delivery of the Receiver's Certificate to Hitchman;

(c) report to this Honourable Court on the status of the sale of the Nelson Street Properties and the St. Patrick's Drive Property (each as defined below) previously approved by this Honourable Court pursuant to the August 15 Order (as defined below); and

(d) recommend that this Honourable Court grant an Order setting aside the August 15 Order, approving the Revised Offer (as defined below) and vesting the Nelson Street Properties and the St. Patrick's Drive Property in and to the Purchaser (as defined below), free and clear of any liens or encumbrances, upon delivery of the Receiver's Certificate to the Purchaser.

TERMS OF REFERENCE

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

6. Capitalized terms not defined in this Twenty-Second Report are as defined in the Receivership Orders.

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 1 WHALEN STREET

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 Orders, the Receiver performed a review of the books, records and asset listings of Atcon Construction.

9. The Property of Atcon Construction includes property municipally known as 1 Whalen Street, Miramichi, New Brunswick, bearing PAN 2811122 and PID 40179715 ("1 Whalen Street"). 1 Whalen Street consists of approximately 2.55 acres of vacant lot in the upper industrial park in Newcastle, Miramichi.

10. In July 2010, the Receiver sought the approval of this Honourable Court to conduct a tender process with respect to the assets of Atcon Construction located in the Province of New Brunswick and the Province of Newfoundland & Labrador that would be suitable to

form the basis of a tender sale process and potential *en bloc* sale of construction and quarry related assets (collectively, the "**Atcon Eastern Assets**"). Pursuant to the Order of Justice Riordon dated July 28, 2010 granted in these proceedings, this Honourable Court approved a tender process with respect to the Atcon Eastern Assets (the "**Tender Process**"). 1 Whalen Street was included as an Atcon Eastern Asset to be sold as part of the Tender Process.

11. Following the completion of the approved Tender Process and the tendering of offers, the Receiver identified the combination of tenders that maximized the net recovery from the Atcon Eastern Assets for the receivership estates of the Respondents.

12. The Receiver received a single offer for 1 Whalen Street during the Tender Process. The offer was rejected by the Receiver, on the basis that the value of the offer was less than the appraised value of the property.

13. As 1 Whalen Street was not sold as part of the Tender Process, the Receiver entered into a listing arrangement with RE/MAX 3000 Ltd./Ltee ("**Re/Max**"), a qualified local real estate agent, for the marketing and sale of 1 Whalen Street on October 29, 2010. The Receiver discussed with Re/Max the estimated value of 1 Whalen Street and Re/Max informed the Receiver that, in its opinion, a listing price of $29,000 for the property was appropriate. Accordingly, based on the advice received from Re/Max, and the appraised value of the property, the Receiver agreed to a listing price of $29,000.

14. The Receiver reports to this Honourable Court that 1 Whalen Street has been publicly listed for sale since October 29, 2010, and during this time period, no offers were received for the property, other than the offer discussed below.

15. In January 2012, an offer to purchase 1 Whalen Street was received from Hitchman Construction Inc. ("**Hitchman**"). As has been previously reported to this Honourable Court, Hitchman purchased lands municipally known as 115 Whalen Street pursuant to the Approval and Vesting Order of Justice Riordon dated September 15, 2011.

16. Following discussions between Hitchman, the Receiver and Re/Max, Hitchman submitted a formal offer to purchase 1 Whalen Street on an "as is, where is" basis for

$17,000 pursuant to an Agreement of Purchase and Sale dated February 29, 2012 (the "**APS**"). The APS is conditional upon the granting of an Order vesting the property in and to Hitchman free and clear of all liens and encumbrances. The APS also had an original closing date deadline of April 31, 2012, which deadline was open to be extended on the written consent of the parties.

17. The Receiver notes that the APS has a sale price of under $100,000, which is the threshold for asset sale values under the Receivership Orders that does not require Court approval, 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 APS was accepted by the Receiver, without seeking Court approval. A copy of the executed APS is attached hereto as **Appendix "A"**.

18. The Receiver has conducted a search of 1 Whalen Street under the *Land Titles Act* (New Brunswick), which search reveals that 1 Whalen Street is subject to encumbrances in favour of:

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

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

    The Receiver understands that the Bank's security over 1 Whalen Street has been assigned to the Province of New Brunswick (the "**Province**"). Attached hereto as **Appendix "B"** is a copy of the Certificate of Registered Ownership obtained by the Receiver in respect of 1 Whalen Street, with a currency date of July 12, 2012.

19. In addition to the foregoing encumbrances, 1 Whalen Street forms part of the Property charged by the Directors Charge, Administration Charge and DIP Lenders Charge created by the Initial Order dated March 1, 2010 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 Receivership Orders.

20. The Receiver reports that the parties to the APS have consented to an extension of the closing date to July 31, 2012 to accommodate a motion to this Honourable Court seeking the granting of a vesting Order.

21. The Receiver is of the view that the price to be received by the Receiver provides for a reasonable realization on 1 Whalen Street for the stakeholders of Atcon Construction, given the time that the property has been on the market and the appraised value of the property. As well, the Receiver reports that the Province, being the creditor with the economic interest in the property, was and is supportive of the sale of 1 Whalen Street to Hitchman.

22. As a result, the Receiver respectfully requests that this Honourable Court grant an Order that vests 1 Whalen Street in and to Hitchman, free and clear of all claims and encumbrances against 1 Whalen Street, upon the delivery by the Receiver of the Receiver's Certificate to Hitchman.

NELSON STREET PROPERTIES AND ST, PATRICK'S DRIVE PROPERTY

23. As has been previously reported to this Honourable Court, Atcon Management Services Inc. ("**AMSI**") is the registered owner of:

(a) 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**"); and

(b) 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**").

24. The Receiver previously reported to this Honourable Court on matters relating to the Nelson Street Properties and the St. Patrick's Drive Property in its Nineteenth Report to the Court dated July 19, 2011 (the "**Nineteenth Report**"). A copy of the Nineteenth Report (without appendices) is attached hereto as **Appendix "C"**.

25. As a brief overview, the Nelson Street Properties and the St. Patrick's Drive Property are located near the plywood mill formerly operated by Atcon Plywood Inc. ("**Atcon**

Plywood"). The Nelson Street Properties and the St. Patrick's Drive Property were included as part of the Atcon Eastern Assets that were subject to the Tender Process. The Nelson Street Properties and the St. Patrick's Drive Property were subject to a successful tender, which was accepted by the Receiver and approved by this Honourable Court pursuant to the Approval and Vesting Order of Justice Riordon dated September 29, 2010. Following the granting of that Order, the purchaser withdrew his tender and the sale transaction was subsequently not completed.

26. The Nelson Street Properties and the St. Patrick's Drive Property were subsequently listed by Re/Max in December 2010. The Nelson Street Properties and the St. Patrick's Drive Property were listed 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.

27. The Receiver discussed the potential sale of the Nelson Street Properties and the St. Patrick's Drive Property with PricewaterhouseCoopers Inc., the Court-appointed receiver of Atcon Plywood ("**PwC**"), who was in the process of completing an *en bloc* marketing of the assets of Atcon Plywood. Given the lack of offers received during the public listing, the Receiver was of the view that the best method to maximize realizations was through an *en bloc* marketing of the Nelson Street Properties and the St. Patrick's Drive Property.

28. 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. The Receiver was of the view that the price to be received for the properties was supported by the appraised value of the properties and provided for a reasonable realization on the Nelson Street Properties and the St. Patrick's Drive Property for the stakeholders of AMSI. The Receiver requested that this Honourable Court grant an Order in these proceedings that approved the sale to the Purchaser and vested the Nelson Street Properties and the St. Patrick's Drive Property in and to the Purchaser free and clear of encumbrances and claims.

29. At a hearing held on July 21, 2011, this Honourable Court determined that an additional opportunity was to be provided to the Purchaser and another bidder to make a final sealed bid to acquire the Atcon Plywood assets and the Nelson Street Properties and the St. Patrick's Drive Property. During this sealed tender process, the Purchaser increased its original offer to $5,225,000 and was determined to be the successful bidder during a hearing held on August 15, 2011. As a result, an Approval and Vesting Order was granted on August 15, 2011, vesting the Nelson Street Properties and the St. Patrick's Drive Property in and to the Purchaser (the "**August 15 Order**"). A copy of the August 15 Order is attached hereto as **Appendix "D"**.

30. The Receiver understands from its review of PwC's Report to the Court dated July 10, 2012 (the "**PwC Report**") that the sale to the Purchaser was not completed, and that PwC has taken the position that the deposit provided was forfeited as a result. The Receiver will discuss with PwC what proportion of the forfeited deposit is to be allocated to the sale of the Nelson Street Properties and the St. Patrick's Drive Property. A copy of the PwC Report (without appendices) is attached hereto as **Appendix "E"**.

31. Additionally, as set out in the PwC Report, a revised offer was received from the Purchaser on June 15, 2012 in the amount of $3,732,530 for the Atcon Plywood assets and the Nelson Street Properties and the St. Patrick's Drive Property (the "**Revised Offer**"). The Receiver understands that PwC is recommending that this Honourable Court approve the Revised Offer on the basis that the assets have been marketed extensively and that the Revised Offer, while lower than the offer approved by the Court on August 15, 2011, is still significantly higher than any previous offer receiver and is supported by the secured creditors with an economic interest in the property.

32. To the extent that this Honourable Court approves the sale of the assets of Atcon Plywood, the Receiver respectfully requests 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

33. The Receiver respectfully requests that this Court grant:

(a) an order vesting 1 Whalen Street in and to Hitchman free and clear of any liens or encumbrances;

(b) an order setting aside the August 15 Order, approving the Revised Offer and 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.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13th 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

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