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BankAtlantic's Levan: Lawsuit won't stop deal

South Florida Business Journal by Brian Bandell, Senior Reporter

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BankAtlantic Bancorp Chairman and CEO [Alan Levan](#) said a recent lawsuit would not stop or stall the deal to sell the bank operations of his company to **BB&T Corp.**

On Nov. 1, the Fort Lauderdale-based company (NYSE: BBX) [announced the deal](#) to sell \$2.1 billion in loans, \$3.3 billion in deposits and all of its BankAtlantic branches to Winston-Salem, N.C.-based BB&T (NYSE: BBT). BankAtlantic Bancorp would retain \$623.6 million in nonperforming and adversely classified assets, and continue as a financing company.

Hildene Capital Management, a hedge fund that partially owns BankAtlantic Bancorp's corporate debt, [filed a lawsuit over the deal on Nov. 23](#). It seeks to either stop the transaction or make BB&T assume liability for the \$330 million in trust-preferred securities (TruPS) issued by BankAtlantic Bancorp. Hildene said the deal would violate the trust documents, in which BankAtlantic Bancorp pledged not to sell or transfer "all or substantially all" of its assets.

Levan said his company would not be selling substantially all of its assets because it would retain those \$623 million in assets and have about \$300 million in equity after receiving proceeds from the sale. Plus, it would pay down about \$39 million in deferred interest on the TruPS by using some of the funds received from BB&T, he said.

"BankAtlantic Bancorp is in a much-improved position to pay the principal and interest on the [TruPS] after the transaction," Levan said.

He noted that the publicly traded portion of its TruPS (NYSE: BBXT) more than doubled to \$24 from \$10.50 the day the deal was announced. That brought them almost equal to their \$25 par value.

"That would certainly indicate that the [TruPS] holders believe this to be a very attractive transaction for them," Levan said. "Hildene is out of sync with the rest of the [TruPS] investors."

In its lawsuit, Hildene claimed to have "indirect beneficial interests" in \$215 million in TruPS issued by BankAtlantic Bancorp. Levan called this claim "poppycock," and said Hildene probably owns about 1 percent of that amount. He said Hildene and CEO [Brett Jefferson](#) are grandstanding.

While he would not discuss his legal strategy, Levan said BankAtlantic Bancorp would respond in court through **Stearns Weaver Miller Weissler Alhadeff & Sitterson**, the Miami-based law firm that represented it in numerous cases, including its defeat of a securities fraud class action lawsuit this year. The class action plaintiffs have appealed and are seeking to reverse the decision. Oral argument is scheduled for March.

[Lewis Cohen](#), a partner with Miami law firm Cohen & Bobotas, said the lawsuit could delay the deal if the banks cannot get it dismissed quickly. The biggest challenge for the plaintiff creditors will be to prove damages before they occur, he said. In order to get a temporary injunction blocking the deal, the plaintiffs would have to prove that they would suffer irreparable harm that couldn't be remedied. In a case like this, it's possible that a monetary judgment could suffice should the plaintiffs win, so the deal could still go forward, he said.

"Normally, if you transfer assets for fair market value, you will have return enough to satisfy debt," Cohen said. "If not and you are relying on future income, then the creditor will be damaged."

BankAtlantic Bancorp could try to show that creditors would not be harmed because the company has the intention to repay them, Cohen said.