

U.S. Century Bank shareholder lawsuit seeks to call merger ‘unenforceable’

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The lawsuit by some U.S. Century Bank shareholders now names proposed acquirer C1 Bank.

Shareholders with a lawsuit against U.S. Century Bank have a new target: C1 Bank, the company with a pending acquisition deal for the bank.

The original lawsuit was filed on Nov. 14 by minority shareholders Carlos E. Silva and Jorge E. Silva, co-partners of a Coral Gables law firm, claiming breach of contract and breach of fiduciary duty against the Doral-based bank only. The complaint was amended several weeks later to become a shareholder derivative action, with a handful of shareholders representing the bank seeking damages against current and former officers and directors of U.S. Century Bank. The shareholders blamed bank officials for mismanaging the bank and making a high level of loans and branch leases with bank directors.

On Dec. 4, the shareholders filed a motion in Miami-Dade County Circuit Court for leave to file a second amended complaint, which would add St. Petersburg-based C1 Bank and parent company CBM Holding Co. as defendants.

Officials with both U.S. Century Bank and C1 Bank couldn't be reached for comment.

If the plaintiffs are successful, they could jeopardize the merger deal for the “undercapitalized” U.S. Century Bank, which accepted \$50.2 million in taxpayer funds from the Trouble Asset Relief Program (TARP) in 2009. While the C1 Bank deal proposes that the government accept a payment of \$6.27 million to redeem TARP, there is the risk of U.S. Century Bank being unable to raise capital to repay anything for TARP and shareholders should the deal fall victim to litigation.

Coral Gables attorney Gonzalo Dorta, who represents the shareholders, said he was confident that a better offer for U.S. Century Bank would be made if the current merger was halted. He said that requesting to enjoin the merger, which he hasn't done, is an option, but he wants to see whether regulators approve it first.

U.S. Century Bank stated that more than 80 percent of shareholders voted in favor of the merger,

which is awaiting federal approval. Shareholders would receive \$2.5 million, or about 1.7 cents on the dollar.

Dorta said the bank previously got a letter of intent for a \$20 million deal.

“A grave injustice would occur should the shareholders of USCB suffer the involuntary divestment of their stock ownership at the hands of the bank’s managing members and simultaneously lose standing to seek relief for the wrongful banking practices which led to the bank’s insolvency and the substantial losses to these shareholders,” the plaintiff motion for leave states.

The Silvas met with U.S. Century Bank Chairman Ramon Rasco in July about their intention to file suit, according to his court filing. The proposed amended complaint claims that Rasco, along with other directors, pursued the merger with C1 Bank in order to insulate themselves from the impending shareholder lawsuit.

The proposed amended complaints claims there were “significantly irregularities” in the shareholder vote on Nov. 28, although it doesn’t specify what those were. It calls the merger a “fire sale” and said the bank abandoned or rejected offers at a significantly higher price because the C1 Bank deal could be consummated expeditiously in order to avoid a shareholder lawsuit against the directors.

Under the merger agreement, CBM could assume all of U.S. Century Bank’s liabilities, including its potential claims against former directors and officers, but it would divest U.S. Century Bank shareholders of their status to pursue a derivative claim on behalf of the bank, according to the proposed amended complaint.

The plaintiff filing also notes that the merger would reduce the bank's \$20 million of directors and officers liability insurance policy by half.

“Since the actions of the bank directors and officers have rendered the bank practically insolvent, the D&O liability policies that the bank maintains are the only viable sources from which these plaintiffs and other similarly situated shareholders may recover part of their losses,” the proposed amended complaint states.

The complaint asks that the court declare the merger agreement “unenforceable” and “inequitable.” It also wants to have the court declare that the merger wouldn’t impair the plaintiffs from pursuing their derivative claims and that CBM must maintain full D&O insurance coverage and a common fund as security to pay for potential damages in the shareholder lawsuit.

"It appears the plaintiffs are doing their best to preserve their existing claims, notwithstanding the planned merger," said non-party to the litigation **Barton S. Sacher**, founding shareholder of Sacher, Zelman, Hartman, Paul, Beiley & Sacher, P.A. and a former senior enforcement attorney for the Securities and Exchange Commission. "It remains to be seen whether these plaintiffs will actually try to stop the merger."

In addition, the proposed amended complaint would charge CBM with tortuous interference for causing U.S. Century Bank to terminate more lucrative offers from other acquirers. It demands damages against CBM.

“CBM went to great lengths to interfere, impede and even threaten legal action against others who were willing to purchase the bank and/or invest significant capital in USCB,” the proposed amended complaint says.

The filing doesn't provide an example of such conduct.

In a November proxy filings to its shareholders – obtained by the *Business Journal* from a confidential source – U.S. Century bank disclosed that it received a non-binding acquisition proposal from several local businessmen on Nov. 1. The proxy didn't say what terms were offered, but by that date, the *Business Journal* had already publicized the terms of the C1 Bank merger, so the bidders probably knew what price they were up against. The merger agreement allowed U.S. Century Bank to consider superior proposals until it obtains shareholder approval.

U.S. Century Bank told both C1 Bank and regulators about the third-party offer and C1 Bank responded on Nov. 9 with a letter asserting that U.S. Century Bank had breached its merger agreement by considering that proposal, according to the proxy statement. U.S. Century Bank told the third-party group about C1 Bank's objections the same day, and the offer was withdrawn the following day, the proxy states.

At great issue to taxpayers is whether the offer would have included a better repayment for TARP. If the deal goes through as is, it would be the largest TARP percentage discount granted for the sale of a bank.

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