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After Botched \$1.36B Deal, Judge Absolves Brown Rudnick of Malpractice Claims

"This case is incredible. Everyone dropped the ball," said the judge. "The deadline was negotiated and plain on its face. Vintage knew about it as did B. Riley."

By Dan Packel | March 05, 2021



Judge Jennifer Schecter sits as a judge in the Commercial Division in New York County. Photo: David Handschuh/NYLJ

A New York state judge has absolved Brown Rudnick of malpractice allegations brought by banker B. Riley Financial Inc., stemming from Vintage Capital Management's failed \$1.365 billion acquisition of Rent-A-Center in 2018

Manhattan Supreme Court Justice Jennifer Schecter found that B. Riley's lawyers at Brown Rudnick were not to be blamed by Vintage Capital and the banker's failure to notify Rent-A-Center that it wished to extend the closing deadline on the deal. The error ultimately allowed Rent-A-Center to secure a \$126.5 million termination fee, prompting the litigation.

“This case is incredible. Everyone dropped the ball. It’s not a situation in which an arcane contractual obligation, statute or court-imposed rule required attorney hand-holding,” Schecter said in her opinion (https://beta.documentcloud.org/documents/20500238-651796_2020_brown_rudnick_llp_v_b_riley_financial_inc_decision__order_on_49) in late February. “The deadline was negotiated and plain on its face. Vintage knew about it as did B. Riley. The notion that an extremely sophisticated client such as B. Riley was unaware of the closing deadline or the need to extend it strains credulity.”

Vintage Capital announced its deal to acquire Rent-A-Center for \$1.365 billion in 2018, in an agreement that included a termination date six months after signing. The contract also allowed either party to unilaterally extend the end date for three months by providing written notice to the other party, but neither Vintage nor B. Riley, the banker, acted to do so.

Brown Rudnick represented B. Riley in the matter, and after the firm learned the banker was preparing to sue for malpractice, its lawyers at New York’s Elman Freiberg launched a suit in March 2020 alleging unpaid legal bills. B. Riley, represented by attorneys at Robins Kaplan, responded in counterclaims with legal malpractice allegations.

But Schecter said the fault was clearly the bankers’ own, and firmly ruled in favor of Brown Rudnick.

“It is absurd, under the circumstances alleged, that attorneys for the acquirer’s banker could be to blame when both the acquirer—the actual party to the merger agreement that had the right and obligation to provide the notice—and its own attorneys missed the date. An attorney cannot be held liable for malpractice for failing to inform a client of a fact of which it was plainly aware,” she said.

A spokesman for Brown Rudnick, represented by Howard Elman and Benjamin Litman at Elman Freiberg in the malpractice case, declined to comment on the ruling Friday. An attorney at Robins Kaplan representing B. Riley both did not immediately respond to a request for comment Friday.

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