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Gibson Dunn Secures Complete Summary Judgment Victory in Billion-Dollar Civil RICO Case

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On April 1, Gibson Dunn partners Reed Brodsky and Amer S. Ahmed scored a total defense victory in the Southern District of New York, putting an end to a billion-dollar civil RICO claim launched over eight years ago by major real estate developers with the blessing of the U.S. government.

In 2017, plaintiffs—18 joint venture entities between the U.S. Army and Air Force, on the one hand, and private real estate developers, on the other—filed suit seeking approximately $1 billion in damages and attorney fees from Danny Ray and his co-defendants, Jefferies, Ambac Assurance Corporation, and a former Ambac employee, Chetan Marfatia. Between 2002 and 2012, the plaintiff entities had negotiated and obtained multi-hundred-million dollar commercial loans from Mr. Ray's former employers to redevelop military housing bases nationwide pursuant to the Military Housing Privatization Initiative Act of 1996 (MHPI). Mr. Ray, a former U.S. Army Captain turned mortgage banker, led the lenders' teams in bidding for the opportunity to provide financing for these privatization projects, competing with major Wall Street players like Goldman Sachs and Bank of America. Although these deals were negotiated by highly sophisticated advisers on both sides and exhaustively memorialized in fully disclosed loan documents, plaintiffs alleged a decade later that the defendants engaged in a RICO conspiracy to extract "hidden" profits from the commercial deals through inflated interest rates on the loans, overstated pricing for credit insurance, and undisclosed fees.

In a 79-page opinion, Judge Paul G. Gardephe granted in full the motions for summary judgment filed by Gibson Dunn client Danny Ray and his former employer, Jefferies, bringing to a close nearly a decade of scorched-earth litigation over alleged fraud in the loans used to privatize military housing. Drawing on millions of documents and the testimony of over 70 witnesses, the Court ruled that the developers' allegations of fraud failed on statute-of-limitations grounds because they have long known about what they had claimed was concealed from them. The court's published decision reinforces the strength of statute-of-limitations defenses in civil RICO cases post-discovery and provides a clear framework for establishing "actual or inquiry notice" in the Second Circuit.

The Gibson Dunn team that represented Mr. Ray was led by Reed Brodsky and Amer S. Ahmed and included Joseph Rose, Nathan Strauss, Hannah Kirshner, Cullinan Williams, and Carson Whitehurst, as well as Anne Champion and Nicholas Pulakos.

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