



VERDICTSEARCH

CALIFORNIA

NEVADA

BUSINESS LAW

Breach of Duty of Good Faith and Fair Dealing

Co-investor owed defaulted loan, investment co. claimed

SETTLEMENT **\$9,500,000**

CASE Start Investments, Inc. v.
Telecommunications of Nevada, L.L.C. and
XO Communications, Inc., No. A475601

COURT Superior Court of Clark County,
Las Vegas, NV

JUDGE Elizabeth Gonzales

DATE 10/11/2005

PLAINTIFF
ATTORNEY(S) Alan S. Loewinsohn (lead), Loewinsohn
Flegle, LLP, Dallas, TX
J. Randall Jones, Harrison, Kemp & Jones,
LLP, Las Vegas, NV
Jennifer Popick, Harrison, Kemp & Jones,
LLP, Las Vegas, NV
Steven C. Wagner, Loewinsohn Flegle, LLP,
Dallas, TX

DEFENSE
ATTORNEY(S) Jeffrey A. Silvestri, McDonald Carano
Wilson, LLP, Las Vegas, NV

FACTS & ALLEGATIONS Plaintiff company Start Investments Inc., an investment subsidiary of Rosewood Property Company, Dallas, and XO Communications Inc., Reston, Va., were among the original investors in Telecommunications of Nevada LLC, (TON) a Delaware corporation, organized in April 1996, to provide telecommunication services to businesses in Las Vegas. Start Investments originally invested \$250,000 in capital and owned 10% of TON.

In 2001, XO and its corporate affiliations acquired the 90% interest in TON not owned by Start Investments, and in February 2002, Start Investments and XO renewed and extended loans in the amount of \$70.5 million to TON. As Start Investments' ownership in TON was 10%, its loan was \$7.05 million. The loans were evidenced by individual notes but subject to a single loan agreement that provided that XO was the lenders' agent for collection and that the agent would take no action to exercise

any remedies in the event of TON's default without the consent of XO as the majority leader. When Start Investments' note came due in December 2002, TON defaulted.

About a year after the default, Start Investments sued XO in Nevada for violation of the implied covenant of good faith and fair dealing, and it later added a claim for alter ego against XO and TON. The plaintiff claimed that XO delayed collection efforts indefinitely on the defaulted loan, which, it alleged, was a breach of good faith and fair dealing.

Further, it claimed that during discovery, it became aware of instances in which XO had ignored corporate formalities in its managing TON. Among other ignored formalities, it contended that XO did not provide annual budgets by certain dates, did not hold annual board meetings and did not provide monthly reports to owners, such as Start Investments.

XO denied that it breached its duty of good faith and fair dealing, and it denied that it was responsible for Start Investments' \$7.05 million loan plus interest. XO denied that it breached good faith and fair dealing when it did not consent to foreclose on the note, claiming that not foreclosing fully comported with the governing documents signed by Start Investments. It alleged that those documents provided that XO could refuse to consent to foreclose on the note for any reason, even if it was not in the best interests of Start Investments.

INJURIES/DAMAGES Start Investments sought to recover the \$7.05 million amount it loaned to TON plus default interest at the rate of 18% per annum that had been accruing since the loan defaulted. It also sought attorney fees.

RESULT XO settled with Start Investments for \$9.5 million prior to trial. The settlement included retirement of the note, interest on the note and the transfer of all of Start Investments' remaining interest in TON.

The parties entered a mutual settlement and release, and in that release, XO and Start Investments both acknowledged that there was no admission of liability by either party.

—Monte Holman