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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-1482**

Shirley Joppru,  
Appellant,

vs.

David Rousher, et al.,  
Respondents.

**Filed April 26, 2011  
Affirmed  
Toussaint, Judge**

Ramsey County District Court  
File No. 62-CV-10-1643

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(for appellant)

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Considered and decided by Toussaint, Presiding Judge; Peterson, Judge; and  
Hudson, Judge.

**UNPUBLISHED OPINION**

**TOUSSAINT**, Judge

Appellant Shirley Joppru challenges the district court's order granting the motion  
of respondents David Rousher and Castle Rock Investments, LLC, to dismiss for lack of

personal jurisdiction, arguing that sufficient minimum contacts exist to satisfy the requirements of due process and Minnesota's long-arm statute. We affirm.

## DECISION

Appellant sued respondents in Minnesota for breach of contract, fraudulent inducement, and several related claims arising out of an investment that she made with Castle Rock involving a real-estate development in Texas. Castle Rock is an Idaho limited-liability company, Rousher is an Idaho resident, and appellant is a Minnesota resident. It is undisputed that appellant contacted Rousher to express interest in investment opportunities; in response, Rousher informed appellant of Castle Rock's real-estate investment in Texas, and Castle Rock offered her an opportunity for investment and mailed her a private-placement memorandum. Appellant signed the private-placement memorandum and mailed it, along with a check for \$50,000, to Castle Rock. Appellant's investment was subsequently lost and not refunded.

Appellant argues that the district court erred by concluding that it lacked personal jurisdiction over respondents. Whether personal jurisdiction exists is a question of law, which we review de novo. *Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 569 (Minn. 2004). When a defendant challenges jurisdiction, the plaintiff bears the burden to make a prima facie showing that sufficient contacts exist with the forum state; at the pretrial stage, the plaintiff's allegations and supporting evidence are taken as true. *Id.* at 570-70; *Dent-Air, Inc. v. Beech Mountain Air Serv., Inc.*, 332 N.W.2d 904, 906-07 & n.1 (Minn. 1983).

Minnesota's long-arm statute, Minn. Stat. § 543.19 (2010), is coextensive with the limits of due process. *Valspar Corp. v. Lukken Color Corp.*, 495 N.W.2d 408, 411 (Minn. 1992); *JL Schwieters Constr., Inc. v. Goldridge Constr., Inc.*, 788 N.W.2d 529, 534 (Minn. App. 2010), *review denied* (Minn. Dec. 14, 2010). "Thus, when analyzing most personal jurisdiction questions, Minnesota courts may simply apply the federal case law." *Valspar*, 495 N.W.2d at 411.

Due process requires that a foreign defendant have minimum contacts with the forum and that the exercise of jurisdiction not offend traditional notions of fair play and substantial justice. *Juelich*, 682 N.W.2d at 570. Due process permits long-arm jurisdiction over a foreign defendant whose conduct and connection with the forum state should lead it to "reasonably anticipate being haled into court there," which occurs when it "purposefully avails itself of the privilege of conducting activities within the forum." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S. Ct. 559, 567 (1980) (quotation omitted).

Appellant does not claim that Minnesota courts have general jurisdiction over respondents, which is based on "continuous and systematic general business contacts," *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416, 104 S. Ct. 1868, 1873 (1984), and "permits a court to exercise its power in a case where the subject matter of the suit is unrelated to those contacts," *Chloé v. Queen Bee of Beverly Hills, LLC*, 616 F.3d 158, 164 (2d Cir. 2010). Thus, any exercise of personal jurisdiction must be one of specific jurisdiction, which requires the litigation to arise out of or relate to the defendant's contacts with the forum. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462,

472, 105 S. Ct. 2174, 2182 (1985).

Under a five-factor test to determine whether jurisdiction is proper, we consider (1) the quantity of the defendant's contacts with the forum state, (2) the nature and quality of the contacts, (3) the connection of the cause of action with the contacts, (4) the state's interest in providing a forum, and (5) the convenience of the parties. *Juelich*, 682 N.W.2d at 570. The first three factors determine whether minimum contacts exist; the last two determine whether the exercise of jurisdiction is reasonable, that is, whether it comports with traditional notions of fair play and substantial justice. *Id.* This is a sliding-scale inquiry: the greater the showing on minimum contacts, the less a showing of reasonableness is needed; and a strong showing of reasonableness may fortify a borderline showing of minimum contacts. *Id.* at 570-71 (citing *Ticketmaster-New York, Inc. v. Alioto*, 26 F.3d 201, 210 (1st Cir. 1994)). The state's interest in providing a forum and the convenience of the parties are secondary factors. *Mountaire Feeds, Inc. v. Agro Impex, S.A.*, 677 F.2d 651, 654 (8th Cir. 1982).

### ***Quantity of Contacts***

Appellant relies heavily on *Marquette Nat'l Bank of Minneapolis v. Norris*, which recognizes that "even one single, isolated transaction between a nonresident defendant and a resident plaintiff can be a sufficient contact to justify exercising personal jurisdiction."<sup>1</sup> 270 N.W.2d 290, 295 (Minn. 1978). But *Marquette* found personal

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<sup>1</sup> "*Marquette* was decided before *World-Wide Volkswagen*. Since that decision, courts tend to require greater contacts before finding personal jurisdiction." *Mid-West Med., Inc. v. Kremmling Med.-Surgical Assocs.*, 352 N.W.2d 59, 61 (Minn. App. 1984) (citation omitted).

jurisdiction over nonresident defendants who actively induced a Minnesota resident to enter into a transaction. *Id.* at 297. Subsequent caselaw has clarified that *Marquette* is limited in scope to such situations. *See Dent-Air, Inc.*, 332 N.W.2d at 908 (explaining that *Marquette* turned on the “aggressive initiation by the nonresident” present in that case); *Viking Eng’g & Dev., Inc. v. R.S.B. Enters.*, 608 N.W.2d 166, 169 (Minn. App. 2000) (“Specific jurisdiction, on which this case turns, can be based on a single transaction if the defendant purposefully solicited contacts, or initiated or induced the transaction out of which the cause of action arises.”), *review denied* (Minn. May 23, 2000); *Wheeler v. Teufel*, 443 N.W.2d 555, 557-58, (Minn. App. 1989) (explaining that personal jurisdiction may be founded on telephone and mail communications only in “situations where the defendant purposefully solicited a series of contacts with Minnesota residents or initiated or induced the transaction out of which the cause of action arose”).

Appellant also argues that, although this case involves a single transaction, the transaction is based on numerous contacts, namely, “the numerous e-mail messages, the mailing of a contract offer from Idaho to [appellant’s] residence in Minnesota, and Castle Rock[’s] receipt of funds from a Minnesota bank.” But the location of the bank on which appellant’s check was drawn is a fortuitous fact “of little consequence.” *Helicopteros*, 466 U.S. at 416-17, 104 S. Ct. at 1873. “[T]elephone conversations and mail exchanges alone have generally not been found sufficient for the assertion of personal jurisdiction.” *Wheeler*, 443 N.W.2d at 557; *see also Mountaire*, 677 F.2d at 656 (“Although the parties did make telephone calls, exchange correspondence, and use banks to arrange payment, the use of arteries of interstate mail, telephone, railway and banking facilities is

insufficient, standing alone, to satisfy due process.” (Quotation omitted.)). Further, although appellant attempts to characterize respondents as the aggressors in the underlying transaction, she concedes that she initiated contact and expressed interest in making an investment, and she does not cite any specific facts tending to show that respondents actively or aggressively initiated or induced the transaction.

The first factor, the quantity of contacts, does not favor the exercise of jurisdiction.

### *Nature and Quality of Contacts*

Appellant does not claim that respondents advertised investment opportunities in Minnesota or in any way targeted Minnesota residents. The primary contact in this case is the transaction by which appellant invested money in real estate located in Texas through a company located in Idaho. The contract does not contain a forum-selection clause or choice-of-law clause selecting Minnesota. It also does not contain any requirement that appellant remain in Minnesota. *Cf. Burger King*, 471 U.S. at 479-80, 105 S. Ct. at 2185-86 (finding purposeful availment when “contemplated future consequences, along with the terms of the contract and the parties’ actual course of dealing,” made franchisee’s contacts with the forum state anything but random, fortuitous, or attenuated). Finally, as discussed above, appellant has not made a prima facie showing that respondents were the aggressors in this transaction. *Cf. Marquette*, 270 N.W.2d at 297 (emphasizing that the case involved the “active inducement of a Minnesota resident”).

In short, nothing about this transaction other than appellant’s current residence is in any meaningful way connected to Minnesota.<sup>2</sup> The nature and quality of the contacts with Minnesota do not support an exercise of personal jurisdiction.

***Connection of the Cause of Action with the Contacts***

This factor—the nexus between the cause of action and the contacts—“distinguishes whether the jurisdiction is specific or general.” *Johnson v. Arden*, 614 F.3d 785, 794 (8th Cir. 2010). Appellant claims that the court has specific jurisdiction over respondents based on claims arising out of or relating to her contractual investment with Castle Rock. This factor turns on the nonresident defendant’s purposeful availment of the protection of Minnesota law. *See Juelich*, 682 N.W.2d at 575 (same). The cause of action is based on respondents’ alleged breach of a contract whose subject matter is in no way connected to Minnesota; any connection to Minnesota is incidental. Thus, the connection of appellant’s claim to respondents’ contacts with Minnesota does not materially favor the exercise of jurisdiction.

***State’s Interest in Providing a Forum***

“Minnesota does have an interest in providing a forum for its residents who have allegedly been wronged.” *Dent-Air*, 332 N.W.2d at 908. But this interest, by itself,

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<sup>2</sup> Appellant also argues that by her investment she purchased a membership interest in Castle Rock, which included the ability to call member meetings in Minnesota. She contends that her membership turns Castle Rock into a Minnesota resident for purposes of federal diversity jurisdiction. Because these arguments are made for the first time in appellant’s reply brief on appeal, we decline to address them. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding issues not raised in district court are waived); *McIntire v. State*, 458 N.W.2d 714, 717 n.2 (Minn. App. 1990) (holding issues raised in reply brief but not argued in principal brief on appeal are waived), *review denied* (Minn. Sept. 28, 1990).

cannot establish minimum contacts or personal jurisdiction. *Id.* The weight of this factor may also be lessened when, as here, “it is not at all clear at this point that Minnesota law should govern” the dispute and when the Minnesota resident has other avenues available to pursue the claim. *Juelich*, 682 N.W.2d at 575 (quotation omitted). This factor does not weigh strongly in favor of finding jurisdiction.

***Convenience of the Parties***

Either appellant or respondents will have to travel to a foreign state to litigate this suit. Absent a showing of a substantial reason supporting one forum over another, “convenience of the parties and witnesses is a neutral factor in the analysis.” *Id.* at 576. This factor is neutral.

Because minimum contacts do not exist and because the reasonableness factors do not weigh strongly in favor of an exercise of jurisdiction, we conclude that the district court did not err by dismissing appellant’s suit for lack of personal jurisdiction over respondents.

**Affirmed.**