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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

KRAUS-ANDERSON CAPITAL, INC.,

Plaintiff and Respondent,

v.

ALAMO MEDICAL SUPPLY &  
EQUIPMENT, INC.,

Defendant and Appellant.

B222739

(Los Angeles County  
Super. Ct. No. LS019117)

APPEAL from an order of the Superior Court of Los Angeles County. Bert  
Glennon, Judge. Affirmed.

James M. Tillipman for Defendant and Appellant.

Cook Collection Attorneys, David J. Cook, Robert J. Perkiss and Nathaniel L.  
Dunn for Plaintiff and Respondent.

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Defendant Alamo Medical Supply & Equipment, Inc., a California corporation (Alamo), appeals from an order denying its motion to vacate a sister-state judgment entered in favor of plaintiff Kraus-Anderson Capital, Inc. (Kraus), a Minnesota corporation, in an underlying action in Minnesota for damages based on fraud and misrepresentation of goods. Alamo contends that the trial court should have vacated the judgment under Code of Civil Procedure section 1710.40<sup>1</sup> because Minnesota's exercise of jurisdiction did not comply with Minnesota's long-arm statute and violated Alamo's due process rights. We affirm the order denying the motion to vacate, concluding that Minnesota did not err in exercising jurisdiction over Alamo, a California corporation whose fraudulent conduct caused damage in Minnesota.

## BACKGROUND

Plaintiff Kraus's business includes "the loan and advance of funds, lease or rental of personal property, and other forms of 'hard asset' financing." Kraus is a Minnesota corporation which conducts business "nationwide." In this case, Kraus loaned and advanced funds for the purchase of medical equipment, in a transaction involving defendant Alamo, described below.

In December 2007, Ed Mann, a financial services broker with RC Leasing in San Francisco, contacted Kraus in Minnesota about a financing opportunity involving Sleep Care, Inc.<sup>2</sup> and Alamo, two California corporations.<sup>3</sup> Sleep Care, the potential borrower, was seeking funds to purchase from Alamo ten new "2008 Itamar Medical Watch-Pat

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<sup>1</sup> Code of Civil Procedure section 1710.40, subdivision (a), provides in part that, "A judgment entered pursuant to this chapter may be vacated on any ground which would be a defense to an action in this state on the sister state judgment . . . ."

<sup>2</sup> Sleep Care is not a party to this action.

<sup>3</sup> It is not clear from the record whether Alamo and Sleep Care sought RC Leasing's assistance in finding financing, or whether Kraus initially sought RC Leasing's Assistance in finding potential borrowers.

100 Sleep Diagnostic Systems” (the equipment) to use in Sleep Care’s center for the study and diagnosis of sleep disorders. Alamo specializes in leasing and sales of medical supplies and equipment. Alamo’s sole place of business is located in Van Nuys, California.

Between December 2007 and March 2008, James Jarussi, Kraus’s Director of Finance and Syndication, and Mann from RC Leasing “traded over 100 phone calls” regarding financing for the equipment. In December 2007 and January 2008, RC Leasing faxed to Kraus numerous documents it had received from Alamo concerning the financial condition of Sleep Care. These documents included Sleep Care’s financial statements, a credit application for Sleep Care from RC Leasing, Sleep Care’s tax returns and bank statements, professional reference letters for Sleep Care, and a letter from Sleep Care describing the growing demand for its services.

In January 2008, Jarussi traveled from Minnesota to California to meet with principals from Alamo and Sleep Care. During a meeting held at Sleep Care’s offices in California, Alamo’s principal, Moiz Talei, represented to Kraus that Mehrdad Hatami was “the owner and operator of Sleep Care.” Hatami and other Sleep Care employees were present at the meeting. Talei also represented to Kraus that Alamo would provide Sleep Care with the equipment (ten new 2008 Itamar Medical Watch-Pat 100 Sleep Diagnostic Systems).

On January 29, 2008, Kraus and Sleep Care entered into a loan agreement under which Kraus would provide the capital for Sleep Care to purchase the equipment from Alamo.<sup>4</sup> Sleep Care signed a promissory note, agreeing to pay Kraus the principal sum of \$107,250, plus interest, in monthly installments under a scheduled payment plan. Payment of the note was secured by a “Security Agreement,” signed by Sleep Care, which granted Kraus a security interest in the equipment. The serial numbers of the ten new 2008 Itamar Medical Watch-Pat 100 Sleep Diagnostic Systems to be purchased were

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<sup>4</sup> The record does not indicate where the agreement was signed, but the documents were generated using Kraus’s forms.

listed in the Security Agreement. Both the promissory note and the Security Agreement stated that they were to be governed by Minnesota law.<sup>5</sup>

Also on January 29, 2008, Kraus entered into a “Vendor Re-Marketing Agreement” with Alamo.<sup>6</sup> In the agreement, Alamo represented that it “is in the business of marketing and distributing Itamar Watch Sleep Diagnostic Systems equipment” and that it “desire[d] to provide certain services” to “assist [Kraus] in the securing of a lease/finance contract or a loan with [Sleep Care].” Under the Vendor Re-Marketing Agreement, Alamo agreed that, in the event of a default by Sleep Care, Alamo would remove the equipment from Sleep Care’s premises, make “best reasonable efforts” to resell the equipment and pay Kraus the proceeds from that sale. This agreement did not include a choice of law or venue clause.

With Sleep Care’s consent, Kraus paid \$107,250 directly to Alamo for the purchase of the equipment. On January 29, 2008, Hatami signed a “Delivery and Installation Certificate” on behalf of Sleep Care, confirming that Sleep Care had received and inspected the equipment. Sleep Care represented that the serial numbers on the equipment it received matched the serial numbers of the equipment listed in the Security Agreement.

On or about February 1, 2008, Sleep Care made the first of 35 planned installment payments. In April 2008, Sleep Care defaulted on the loan agreement and ceased making payments to Kraus. Hatami indicated to Kraus that he did not “have control of the business [Sleep Care] or the equipment and would not be able to pay for” the equipment. Kraus suspected that Alamo and Sleep Care had engaged in fraudulent conduct.

On April 14, 2008, Kraus sent a letter to Alamo, requesting that it remove the equipment from Sleep Care’s premises pursuant to the Vendor Re-Marketing Agreement. Kraus also inquired about why the serial numbers for the equipment, which were listed

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<sup>5</sup> Hatami personally guaranteed the loan. In the guaranty agreement, he “consent[ed] to personal jurisdiction and venue” in Minnesota.

<sup>6</sup> The record does not indicate where this agreement was signed, but it was generated using Kraus’s form.

on Alamo's invoice to Sleep Care (as well as the Security Agreement and the Delivery and Installation Certificate), did not match the serial numbers for the equipment listed on Sleep Care's property insurance certificate. On April 17, 2008, Alamo sent an e-mail to RC Leasing, explaining that, "Upon completion of delivery, the serial numbers were rechecked for verification, and found [sic] that they differed from the recorded numbers. The corrected serial numbers were printed on an invoice form and immediately given to the client (Mr. Hatami)." Alamo also represented in the e-mail that it had delivered to Sleep Care ten "brand new" beds. RC Leasing forwarded Alamo's e-mail to Kraus.

Also on April 17, 2008, Hatami informed Kraus that Sasan Nikbakht and Stacie Cargnell were in possession of the equipment. Nikbakht and Cargnell were present at the January 2008 meeting in California, and were introduced to Jarussi (from Kraus) as employees of Sleep Care.

On April 25, 2008, Alamo faxed a "lease application" directly to Kraus, requesting that Kraus change the borrower on the loan from Sleep Care to Sleep Tech Monitoring, a company purportedly owned by Nikbakht. Talei from Alamo advised Kraus: "I strongly suggest that we do not miss the opportunity with Sammy [Nikbakht], and try to make it happen." After conducting "routine background checks on Nikbakht," Kraus declined to extend financing to Sleep Tech Monitoring.

On May 21, 2008, Kraus "received word from Alamo that nine of the ten units had been picked up and were being readied for resale." The following day, Cargnell informed Kraus that she was in possession of the tenth and final piece of equipment. Jarussi "instructed her to turn it over to Alamo."

On June 24, 2008, Itamar Medical Ltd., the manufacturer of the equipment Sleep Care purportedly purchased from Alamo, informed Kraus that "Alamo was no longer a recognized dealer and that equipment was *not* sold to Alamo or Talei after 2005." Itamar also informed Kraus that Alamo's "asking price" for the older equipment it sold "was higher than the price charged by Itamar for new 2008 equipment." Itamar explained that "equipment manufactured in 2005 would differ significantly in software and hardware from new 2008 equipment and would therefore be less desirable."

Alamo stopped responding to Kraus's inquiries about the equipment and failed to recover any money for it.

Kraus filed a breach of contract action in Minnesota against Sleep Care and its representatives, Hatami, Nikbakht and Cargnell. On March 20, 2009, the court entered a default judgment against Sleep Care for \$102,903.38. In its findings of fact and conclusions of law, the Minnesota court concluded that it had jurisdiction over Sleep Care and that Sleep Care had breached its contract with Kraus, causing damages to Kraus.<sup>7</sup> Kraus filed an application in a California superior court for entry of judgment on the sister-state judgment. The application was granted.

Having concluded that it could not collect on the judgment against Sleep Care, on March 17, 2009, Kraus filed an action in Minnesota against Alamo and Talei, asserting claims for fraud and misrepresentation, violation of the Uniform Deceptive Trade Practices Act, breach of contract and unjust enrichment. Kraus alleged, among other things, that Alamo and Talei falsely represented (1) that Hatami was the owner and operator of Sleep Care and (2) that Sleep Care intended to purchase new, 2008 equipment. Kraus asserted that Alamo and Talei "knew they would be more likely to obtain greater funds from [Kraus]" if they made these misrepresentations.

On or about June 12, 2009, the Minnesota court entered a default judgment against Alamo for \$102,903.38. The court concluded that it had jurisdiction over Alamo and that Alamo's actions caused damages to Kraus. The Minnesota court found that Alamo "execute[d] certain documents to facilitate a purchase of its goods with funds provided by

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<sup>7</sup> The Minnesota court granted Nikbakht's motion to dismiss Kraus's complaint based on lack of personal jurisdiction. The court explained: "The Complaint does not allege any contact with Minnesota other than Nikbakht's presence at a meeting in California. At best, this constitutes one attenuated contact with a resident of Minnesota and not with the forum of Minnesota. Nikbakht is not a party to any of the written contracts at issue." In response to Kraus's argument that "this singular contact is enough to warrant personal jurisdiction because Nikbakht was engaged in a fraud leading to the transaction," the Minnesota court found that Kraus did not properly plead a fraud claim against Nikbakht. It is not clear from the record whether the court entered judgment against Hatami and Cargnell.

Kraus-Anderson Capital, Inc. . . . [¶] The character or quality of these goods was misrepresented to the extent that they are of no value to [Kraus].”

Kraus filed an application in Los Angeles Superior Court for entry of judgment on the sister-state judgment against Alamo. On October 2, 2009, the trial court below entered the judgment.

Alamo filed a motion to vacate the sister-state judgment, pursuant to Code of Civil Procedure section 1710.40, on grounds that it was rendered in excess of the Minnesota court’s jurisdiction. Alamo argued that it did not consent to personal jurisdiction in Minnesota, and that its participation in the transaction did not establish minimum contacts with Minnesota.

Kraus opposed the motion, arguing that the Minnesota court’s exercise of jurisdiction was proper based on Alamo’s tortious conduct. Kraus described Alamo’s “illicit scheme” as follows: “1. Submitting false documents and altered serial numbers in an attempt to induce [Kraus] to advance funds. [¶] 2. Lying to [Kraus], implicitly and expressly that ALAMO was an authorized dealer of the equipment. [¶] 3. Lying to [Kraus] that the equipment was new, and not three years old. [¶] Failing to disclose that the equipment was valueless give[n] that the 2008 vintage of the equipment was selling for a lesser price.”

On January 21, 2010, the trial court heard oral argument on Alamo’s motion to vacate the sister-state judgment. On February 18, 2010, the trial court entered an order denying the motion.

## **DISCUSSION**

### **I. Motion to Dismiss the Appeal**

On March 24, 2011, Kraus filed a motion to dismiss Alamo’s appeal on grounds (1) that Alamo failed to respond to post-judgment discovery and a court order compelling

that discovery, (2) that Alamo is a dissolved corporation, and (3) that Alamo's opening brief is defective. We reject each of Kraus's arguments for dismissal.

On March 22, 2011, Alamo served its responses to Kraus's discovery. Kraus has acknowledged that it received the responses and that Alamo has complied with the court order compelling discovery.

Kraus also argues that the appeal is moot because Alamo is a dissolved corporation with no assets and any decision by this court would confer no benefit on Alamo. A dissolved corporation continues to exist for the purpose of defending an action against it. (Corp. Code, § 2010, subds. (a) & (b).) Alamo has the right to defend itself in this action. Kraus's desire that Alamo abandon the appeal is not grounds for dismissal.

We disagree with Kraus's assertion that there are defects in Alamo's opening brief which warrant dismissal of the appeal. Kraus argues that Alamo (1) fails "to clearly set forth all facts in the Opening Brief," (2) fails "to clearly enunciate the standard of review," and (3) fails "to cite to the record" on two pages of its brief. We find the opening brief to be sufficient to avoid dismissal.

## **II. Alamo's Standing to Challenge Jurisdiction**

Under the Sister State Money-Judgments Act, a sister-state judgment may be vacated on any ground which would be a defense to an action in California. (Code Civ. Proc., § 1710.40, subd. (a).) One such defense is that the judgment was rendered in excess of the court's jurisdiction. (*Airlines Reporting Corp. v. Renda* (2009) 177 Cal.App.4th 14, 20.) Alamo may challenge the Minnesota court's jurisdiction in this action. "[A] defendant is always free to ignore the judicial proceedings, risk a default judgment, and then challenge that judgment on jurisdictional grounds in a collateral proceeding." [Citation.] (*Yu v. Signet Bank/Virginia* (1999) 69 Cal.App.4th 1377, 1386; *Airlines Reporting Corp. v. Renda, supra*, 177 Cal.App.4th at p. 20 ["It is of no consequence that the judgment debtor 'slept on [his] rights' because he 'is always free to ignore the judicial proceedings, risk a default judgment, and then challenge that judgment on jurisdictional grounds in a collateral proceeding'"].)



### **III. Standard of Review**

“In reviewing a trial court’s determination of jurisdiction, we will not disturb the court’s factual determinations ‘if supported by substantial evidence.’ [Citation.] ‘When no conflict in the evidence exists, however, the question of jurisdiction is purely one of law and the reviewing court engages in an independent review of the record.’ [Citation.]” (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 273.)

Alamo does not dispute any of the facts set forth by Kraus in its complaint or in Jarussi’s declaration. That Alamo may characterize these facts differently than Kraus, does not mean there is a conflict in the evidence. (See *Great-West Life Assurance Co. v. Guarantee Co. of North America* (1988) 205 Cal.App.3d 199, 204 [“While the parties at times contested each other’s characterization of the facts, the evidence presented by each side was not in conflict. We therefore engage in an independent review of the record”].) Accordingly, we review the trial court’s order de novo.

Under Code of Civil Procedure section 1710.40, the moving party has the burden of showing that the judgment should be set aside. (*Tsakos Shipping Trading, S.A. v. Juniper Garden Town Homes, Ltd.* (1993) 12 Cal.App.4th 74, 88; *St. Sava Mission Corp. v. Serbian Eastern Orthodox Diocese* (1990) 223 Cal.App.3d 1354, 1364 (*St. Sava*) [“The burden of showing the invalidity of the judgment is upon the party attacking the judgment”].) Therefore, Alamo had the burden of demonstrating that the Minnesota court lacked personal jurisdiction.

### **IV. Minnesota Law on Jurisdiction**

In deciding whether the sister-state judgment was rendered in excess of jurisdiction, the trial court was required to apply Minnesota law to determine if the exercise of jurisdiction over Alamo in Minnesota was proper. (See *St. Sava, supra*, 223 Cal.App.3d at 1364 [“In the absence of a violation of federal constitutional rights, the validity and effect of a judgment of a sister state are governed by the law of the state where the judgment was rendered”].) In order to determine if Minnesota had jurisdiction over Alamo, “it must be ascertained whether the foreign state . . . has by statute provided for the assertion of jurisdiction in the context of the situation presented. If so, then it

must be determined whether that assertion of jurisdiction is constitutionally permissible.” (*Indiana Insurance Co. v. Pettigrew* (1981) 115 Cal.App.3d 862, 864-865.)

Minnesota’s long-arm statute provides that a court may exercise personal jurisdiction over a foreign corporation if the foreign corporation “commits any act outside Minnesota causing injury or property damage in Minnesota.” (Minn. Stat., § 543.19, subd. 1(4).) This general rule is subject to two exceptions. No jurisdiction shall be found when: (1) “Minnesota has no substantial interest in providing a forum;” or (2) “the burden placed on the defendant by being brought under the state’s jurisdiction would violate fairness and substantial justice.” (Minn. Stat., § 543.19, subd. 1(4)(i) & (ii).)

To determine if the burden placed on the defendant would violate fairness and substantial justice, Minnesota courts apply a five-factor test. These five factors are: “(1) The quantity of the contacts with the forum state, [¶], (2) The nature and quality of the contacts, [¶] (3) The source and connection of the cause of action with these contacts, [¶] (4) The interest of the state providing a forum, [¶] [and] (5) The convenience of the parties.” (*Vikse v. Flaby* (1982) 316 N.W.2d 276, 282 (*Vikse*); *Aftanase v. Economy Baler Co.* (1965) 343 F.2d 187, 197.) The first three factors in this test are the “primary factors” to be used in determining if the assertion of jurisdiction accords with fairness and substantial justice. (*Marquette Nat. Bank of Minneapolis v. Norris* (1978) 270 N.W.2d 290, 295 (*Marquette*).)

Minnesota’s five-factor test “represents a codification of the ‘minimum contacts’ test of” *International Shoe Co. v. State of Washington* (1945) 326 U.S. 310. (*Vikse, supra*, 316 N.W.2d at p. 282.) Thus, “[the] five-factor test continues to provide the appropriate analytical framework for determining whether the assertion of personal jurisdiction is consistent with due process.” (*Juelich v. Yamazaki Mazak Optonics Corp.* (2004) 682 N.W.2d 565, 573.)

## V. Minimum Contacts Under Minnesota Law

To decide whether Minnesota properly exercised jurisdiction over Alamo pursuant to Minnesota's long-arm statute and constitutional due process, the court must determine if Alamo had sufficient minimum contacts with Minnesota. For the reasons discussed below, we conclude that Alamo's contacts with Minnesota were sufficient to uphold the Minnesota court's exercise of jurisdiction over Alamo.

Kraus alleged (and the Minnesota court found) that Alamo misrepresented the character and quality of the equipment and its misrepresentations caused damages to Kraus.<sup>8</sup> Because Alamo committed acts which caused injury in Minnesota, jurisdiction over Alamo in Kraus's action was proper under Minnesota's long-arm statute unless Minnesota had no substantial interest in providing a forum or the burden placed on Alamo by being brought under the state's jurisdiction would violate notions of fairness and substantial justice. (Minn. Stat., §543.19, subd. 1(4)(i) & (ii).) Alamo does not appear to dispute that Minnesota has an obvious interest in providing its residents with a means of redress from the type of tortious conduct alleged in Kraus's complaint. (See *Marquette, supra*, 270 N.W.2d at p. 295 [“Minnesota obviously has an interest in providing a forum for (its) resident allegedly wronged”].) Accordingly, we must apply Minnesota's five-factor test to determine whether the burden on Alamo would violate fairness and substantial justice. Alamo contends that its “participation in the underlying transaction did not establish minimum contacts” under Minnesota's long-arm statute and constitutional due process requirements. We disagree.

The first factor to consider is the quantity of the contacts with the forum state. Alamo's contact with Minnesota is based on its participation in the financial transaction between Kraus, Alamo and Sleep Care. A single transaction may give rise to jurisdiction.

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<sup>8</sup> Alamo may not challenge the merits of Kraus's claims. Under the full faith and credit clause (U.S. Const., art. IV, § 1), Alamo is bound by the Minnesota court's determination on the merits. The only issue Alamo may attack in these proceedings is the Minnesota court's jurisdiction. (*Airlines Reporting Corp. v. Renda, supra*, 177 Cal.App.4th at pp. 19-20.)

“[W]here the cause of action arises directly out of defendants’ contacts with the state, as here, the United States Supreme Court has recognized that even one single, isolated transaction between a nonresident defendant and a resident plaintiff can be a sufficient contact to justify exercising personal jurisdiction under due process standards.” (*Marquette, supra*, 270 N.W.2d at p. 295.) Moreover, “[a] tort action . . . traditionally requires even less contact with the forum than an ordinary action in contract.” (*Hunt v. Nevada State Bank* (1969) 285 Minn. 77, 110-111 (*Hunt*)). Alamo’s involvement in a financial transaction designed to defraud a Minnesota company constitutes a sufficient quantity of contact to warrant Minnesota’s exercise of jurisdiction.

When jurisdiction is based on a single transaction, “the nature and quality of the contact becomes dispositive.” (*Marquette, supra*, 270 N.W.2d at p. 295.) This second factor “requires an examination of the potential effect” of the contact on Minnesota. (*Vikse, supra*, 316 N.W.2d at pp. 280, 282 [personal jurisdiction over “a nonresident individual who was a stockholder, officer, director, and attorney for an Arizona corporation” was proper “where the corporation and the individual commit[ted] fraudulent acts in Arizona that cause[d] damage in Minnesota”].) In assessing the quality of contacts, a Minnesota court looks to whether the nonresident party purposefully availed itself of the benefits and protections of Minnesota. (*Dent-Air, Inc. v. Beech Mountain Air Service, Inc.* (1983) 332 N.W.2d 904, 907.)

Alamo purposefully availed itself of the benefits of Minnesota when it induced and carried out a scheme to defraud a Minnesota corporation. Minnesota courts have “considered a defendant’s having purposefully . . . induced the transaction out of which the cause of action arises as a crucial factor justifying the assumption of personal jurisdiction.” (*Marquette, supra*, 270 N.W.2d at p. 296.) Alamo encouraged Kraus to loan a large sum of money to Sleep Care by misrepresenting the nature and quality of the equipment it intended to sell to Sleep Care, and the financial condition of the borrower. The information Kraus received regarding Sleep Care’s financial condition came from Alamo. Alamo falsely represented to Kraus that Hatami was the owner and operator of Sleep Care. When Sleep Care defaulted on the loan after making one out of 35

installment payments, Alamo found and presented to Kraus a new borrower to assume the loan obligation and perpetuate Alamo's fraudulent scheme. In sum, Alamo sought to induce Kraus to enter into a financial transaction which would allow Alamo to unlawfully profit from the Minnesota company.

Once Sleep Care defaulted, Alamo had an obligation under the Vendor Re-Marketing Agreement to retake possession of the equipment and attempt to resell it. Alamo falsely represented to Kraus that it was in possession of the equipment described in the security agreement and that it was readying this equipment for resale. In fact, Alamo never had possession of the new, 2008 equipment it purported to sell to Sleep Care.

Alamo designed a fraudulent transaction to defraud a Minnesota corporation. As the Minnesota Supreme Court stated in another case: "This is not a case of an isolated or unforeseeable contact with Minnesota. [The defendant] purposefully availed himself of this state [Minnesota] to carry out a scheme to defraud investors [Minnesota residents]. Although his direct contacts with this state were limited, he was instrumental in setting in motion the fraudulent scheme and in keeping it going." (*Kopperud v. Agers* (1981) 312 N.W.2d 443, 445.)

Alamo argues that its participation in the underlying transaction did not establish minimum contacts with Minnesota because all of its conduct occurred in California. Alamo also emphasizes that it is a California corporation with no agents, offices or property in Minnesota. These facts alone fail to establish that Minnesota lacked jurisdiction. (See *Marquette, supra*, 270 N.W.2d at p. 295 ["The fact that the nonresident appellants were never physically present in the state in the course of their transaction, which was accomplished entirely by telephone and mail, is clearly of no significant consequence".])

Alamo's contact with Kraus, in inducing a financial transaction which would defraud the Minnesota corporation and benefit Alamo, was of such nature and quality as to warrant subjecting Alamo to the jurisdiction of the Minnesota court. Throughout these proceedings, Alamo has characterized the dispute between the parties as a plain breach of

contract, and has ignored the fraudulent scheme it set in motion and perpetuated on Kraus. As explained above, less contact with the forum state is required in an action for fraud than in a non-tortious breach of contract action. (See *Hunt, supra*, 285 Minn. at pp. 110-111.)<sup>9</sup>

In applying the third “primary factor” of the five-factor test, we consider the source and connection of the cause of action with Alamo’s Minnesota contacts. All of the causes of action against Alamo in Kraus’s complaint are based on Alamo’s scheme to defraud Kraus. Thus, Alamo’s contacts with Minnesota are the basis of Kraus’s complaint against Alamo. Kraus did not bring an action in Minnesota based on conduct of Alamo which was directed toward another state.

Turning to the two “secondary factors,” as discussed above, and apparently not disputed by Alamo, Minnesota has an obvious interest in providing a forum for Minnesota residents who have been defrauded.

The last factor is the convenience of the parties. “[T]he convenience issue is rarely dispositive.” (*Marquette, supra*, 270 N.W.2d at p. 295.) Here, we will not vacate the sister-state judgment because it would have been inconvenient for Alamo to defend itself in Minnesota. Alamo engaged in a protracted scheme to defraud a Minnesota resident. Minnesota’s assertion of jurisdiction over Alamo does not violate notions of fairness and substantial justice.

The trial court did not err in denying Alamo’s motion to vacate the sister-state judgment.

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<sup>9</sup> In its appellate brief, Alamo does not rely on Minnesota case law. Below, however, Alamo cited breach of contract cases in which Minnesota courts noted that, “[M]erely entering into a contract with a forum resident does not provide the requisite contacts between a [nonresident] defendant and a forum state.” (See, e.g., *S.B. Schmidt Paper Co. v. A To Z Paper Co., Inc.* (1990) 452 N.W.2d 485, 488.) Alamo’s contacts with Minnesota, however, include a scheme to defraud a Minnesota resident, not merely entering into a contract with a Minnesota resident.

**DISPOSITION**

The order is affirmed. Kraus is entitled to recover costs on appeal.  
NOT TO BE PUBLISHED.

We concur:

CHANEY, J.

MALLANO, P. J.

ROTHSCHILD, J.