

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 23, 2005

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP974

Cir. Ct. No. 2004CV1755

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

VIRCHOW KRAUSE LLP,

PLAINTIFF-RESPONDENT,

V.

RANDY PAUL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
JAMES L. MARTIN, Judge. *Affirmed.*

Before Lundsten, P.J., Deininger and Higginbotham, JJ.

¶1 PER CURIAM. Randy Paul appeals a judgment awarding \$20,366.69 to Virchow Krause, LLP. Virchow, an accounting firm, provided services to Paul in the course of a business-related dispute. The trial court held on summary judgment that Paul owed Virchow for those services under theories of

account stated, promissory estoppel and unjust enrichment. Paul contends the trial court improperly granted summary judgment because material fact disputes remain unresolved. We affirm.

¶2 In Paul's initial brief to this court he objects to summary judgment but does so only in conclusory terms. He does not identify and discuss any material fact disputes and cites virtually no facts of record. He has inadequately briefed the matter and generally we decline to consider inadequately briefed appeals. See *Hempel v. City of Baraboo*, 2003 WI App 254, ¶23 n.7, 268 Wis. 2d 534, 674 N.W.2d 38, *aff'd*, 2005 WI 120, ___ Wis. 2d ___, 699 N.W.2d 551.

¶3 Notwithstanding the inadequate brief, we will consider the merits of the appeal and in particular the merits of the trial court's conclusion that Virchow may recover under the theory of unjust enrichment. Generally, our review of a summary judgment is de novo. See *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315-17, 401 N.W.2d 816 (1987). When the grant of summary judgment is based in equity, however, as it is here, we have a two-tiered standard of review. *Pietrowski v. Dufrane*, 2001 WI App 175, ¶5, 247 Wis. 2d 232, 634 N.W.2d 109. We review the legal issues de novo but review the decision to grant equitable relief for an erroneous exercise of discretion. *Id.*

¶4 Although facts may be in dispute on Virchow's other theories of recovery, undisputed facts establish its claim for unjust enrichment. A claim of unjust enrichment requires proof that the plaintiff provided the defendant with a benefit, the defendant appreciated or knew of the benefit and the defendant retained the benefit under circumstances that make its retention inequitable. *Tri-State Mech., Inc. v. Northland Coll.*, 2004 WI App 100, ¶14, 273 Wis. 2d 471, 681 N.W.2d 302. Here, undisputed facts show that a Virchow accountant,

James P. Caven, spent more than eighty hours working on Paul's case. Paul knew Caven was working for him because they met often and there was frequent communication between Caven, Paul and Paul's attorney. Caven and another Virchow employee visited Paul's office to obtain computer records. On other occasions Paul provided Caven with paper documents. Caven met with Paul on several occasions and participated in a number of telephone conferences with Paul. At one point Paul paid Virchow \$5,000 for Caven's services, an amount slightly less than one-fourth the total Virchow billed on Paul's account. The case ended with Paul receiving a cash settlement.

¶5 These facts show Virchow performed substantial work for Paul, Paul was aware of the accounting work done for him and he accepted Virchow's services until the matter concluded. Paul has not disputed the value of Virchow's services, as represented by its bill, and the unpaid portion of that bill was substantial. Under those circumstances, the trial court reasonably applied the theory of unjust enrichment to allow recovery. Our decision makes it unnecessary to determine whether summary judgment was appropriate on Virchow's alternative theories of recovery.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (2003-04).

