

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

August 3, 1995

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

NOTICE

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

No. 94-0524

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

PAUL F. RAMSEY,

Plaintiff-Appellant,

v.

**ROBERT P. ELLIS, III,
and FF INVESTMENT SERVICES,
INC., f/k/a ROBERT P. ELLIS
INVESTMENT REAL ESTATE, INC.,**

Defendants-Respondents.

APPEAL from a judgment of the circuit court for Dane County:
MARK A. FRANKEL, Judge. *Affirmed.*

Before Eich, C.J., Gartzke, P.J., and Dykman, J.

PER CURIAM. Paul F. Ramsey appeals from a judgment dismissing his claims against Robert P. Ellis, III, and Robert P. Ellis Investment Real Estate, Inc. This is a continuation of Ramsey's quantum meruit claim, as

described in *Ramsey v. Ellis*, 168 Wis.2d 779, 484 N.W.2d 331 (1992). We affirm.

Ramsey argues that the trial court erroneously exercised its discretion by denying his motion for a continuance. The motion was filed shortly before trial and was based on the inability of an out-of-state expert witness to appear because of personal business obligations. The court acknowledged that the witness was important to Ramsey's case, but noted that the case had been pending for a long time, that the trial had recently been postponed at Ramsey's request, and that the court was unable to schedule another case to fill the trial dates. The court examined the relevant facts, applied a proper standard of law and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach. See *State v. Gudenschwager*, 191 Wis.2d 432, 441, 529 N.W.2d 225, 229 (1995). Therefore, we affirm.

Ramsey also argues that the trial court erroneously exercised its discretion by quashing his subpoenas of Dean Retzlaff, an accountant who worked with the defendants. A court may quash a subpoena if it is unreasonable and oppressive. Section 805.07(3), STATS. The court quashed the subpoenas because it thought there was an inadequate showing to reopen the plaintiff's case and "go fishing" for unknown and unreviewed documents. We conclude the court did not erroneously exercise its discretion.

Ramsey also argues that the trial court erred in dismissing his claim for insufficient evidence at the close of his case. The test is whether there was credible evidence to sustain a finding in Ramsey's favor, considering all credible evidence and reasonable inferences therefrom in the light most favorable to Ramsey. Section 805.14(1) and (3), STATS.

The supreme court remanded this case for the trial court to determine the reasonable value of Ramsey's services to the defendants and what, if any, damages he is entitled to recover. *Ramsey*, 168 Wis.2d at 790, 484 N.W.2d at 336. Ramsey attempted to prove that the value of his services should be measured as a percentage of the revenue raised by the real estate projects at issue. This approach is contrary to the law of quantum meruit.

While recovery for unjust enrichment is based upon the inequity of allowing the defendant to retain a benefit without paying for it, recovery in quantum meruit is based upon an implied contract to pay reasonable compensation for services rendered.... Accordingly, damages in an unjust enrichment claim are measured by the benefit conferred upon the defendant, while damages in a quantum meruit claim are measured by the reasonable value of the plaintiff's services.

Id. at 785, 484 N.W.2d at 333-34.

Because Ramsey's attempt to use percentage of revenue is more a measure of the benefit conferred upon the defendant than a measure of the value of Ramsey's services, we conclude it is not the appropriate method to calculate that value. Ramsey did not submit evidence in support of any other theory of valuation. Therefore, the trial court properly dismissed Ramsey's complaint at the close of his case.

Finally, Ramsey argues that he was entitled to a jury trial. However, because we have concluded that the trial court properly granted the defendants' motion to dismiss, any error regarding the lack of a jury trial is harmless. The jury never would have rendered a verdict.

By the Court. – Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.